160 US 374

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~418.~~ 132

THE UNION MUTUAL LIFE INSURANCE COMPANY,
PLAINTIFF IN ERROR,

vs.

ELIZABETH KIRCHOFF.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED JULY 8, 1892.

(15,078.)

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a UNITED STATES OF AMERICA, *Northern District of Illinois, Northern Division,* } *ss:*

THE UNITED STATES OF AMERICA:

To the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said supreme court, *between* Union Mutual Life Insurance Company is plaintiff in error and Elizabeth Kirchoff is defendant in error, in an action in chancery to allow redemption, a manifest error hath happened, to the great damage of the said Union Mutual Life Insurance Company, plaintiff in error, as by its complaint appears, and it being fit that the error, if any there has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the seventh day of July, 1892, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 8th day of June, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States the 116th year.

E. A. DRUMMOND,
Clerk U. S. Circuit Court, Nor. Dist. Ill.

[Endorsed:] Supreme Court of the United States. Union Mutual Life Insurance Company, plaintiff in error, *vs.* Elizabeth Kirchoff, defendant in error. Writ of error. Copy deposited for the defendant in error in the clerk's office of the supreme court of Illinois, at Ottawa, Illinois.

b Supreme Court of Illinois, Northern Grand Division.

UNION MUTUAL LIFE INSURANCE COMPANY *vs.* ELIZABETH KIRCHOFF. } Appeal from Appellate Court of Illinois, First District.

I, Alfred H. Taylor, clerk of the supreme court of Illinois for the northern grand division, do hereby certify that on the tenth day of

June, in the year 1892, a copy of the foregoing writ of error for the defendants in error was lodged in my office, at Ottawa.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

Witness my hand and the seal of this court this twenty-first day of June, A. D. 1892.

A. H. TAYLOR,
Clerk of the Supreme Court.

c UNITED STATES OF AMERICA, *Northern District of Illinois, Northern Division,* } *ss:*

To Elizabeth Kirchoff, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the seventh day of July, A. D. 1892, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois for the northern grand division, wherein Union Mutual Life Insurance Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. John M. Harlan, associate justice U. S. Supreme Court, this eighth day of June, in the year of our Lord one thousand eight hundred and ninety-two.

JOHN M. HARLAN,
Asso. Justice S. C., U. S.

[Endorsed:] Supreme Court of the United States. Union Mutual Life Ins. Co. *vs.* Elizabeth Kirchoff. Citation to October term, A. D. 18—.

We accept service of the within citation this 9th day of June, 1892.

—— ——,
Solicitors for Elizabeth Kirchoff.

STATE OF ILLINOIS, *Cook County,* } *ss:*

Charles T. Schwarz, being duly sworn according to law, deposes and swears that he served the within citation upon William S. Harbert and Harbert and Daley by delivering a true copy thereof to the said William S. Harbert and by exhibiting to him the within original on this 9th day of June, 1892, at his office, in the Major block, Chicago.

CHARLES T. SCHWARZ.

Subscribed and sworn to by the said Charles T. Schwarz before me, a notary public for Cook county, Illinois, this 9 day of June, 1892.

[Seal W. C. Gleason, Notary Public, Cook Co., Ill.]

W. C. GLEASON,
Notary Public.

d Supreme Court of Illinois, Northern Grand Division.

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
ELIZABETH KIRCHOFF.
} Appeal from Appellate Court of Illinois, First District.

I, Alfred H. Taylor, clerk of the supreme court of Illinois for the northern grand division, do hereby certify that on the tenth day of June, in the year 1892, a copy of the foregoing citation and return was lodged in my office, at Ottawa.

Witness my hand and the seal of this court this twenty-first day of June, A. D. 1892.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

A. H. TAYLOR,
Clerk of the Supreme Court.

e Supreme Court of Illinois, Northern Grand Division.

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
ELIZABETH KIRCHOFF.
} Appeal from Appellate Court of Illinois, First District.

I, Alfred H. Taylor, clerk of the supreme court of Illinois for the northern grand division, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from one to six hundred and twenty-five, inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled and of the whole thereof, including the opinion of the court, as the same remain of record and on file in my said office.

In testimony whereof I have hereunto set my hand and caused the seal of the said supreme court of Illinois to be hereunto affixed, at Ottawa, in said State, this twenty-first day of June, in the year of our Lord one thousand eight hundred and ninety-two.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

A. H. TAYLOR,
Clerk of the Supreme Court.

1 State of Illinois Supreme Court, Northern Grand Division.

At a supreme court begun and held at Ottawa, on Tuesday, the fourth day of March, in the year of our Lord one thousand eight hundred and ninety, within and for the northern grand division of the State of Illinois.

Present: Simeon P. Shope, chief justice; John Scholfield, justice; Alfred M. Craig, justice; Benj. D. Magruder, justice; Joseph M. Bailey, justice; David J. Baker, justice; Jacob W. Wilkin, justice; George Hunt, attorney general; Lawrence Morrissey, sheriff; Alfred H. Taylor, clerk.

Be it remembered that afterwards, to wit, on the fifth day of March, A. D. 1890, there was filed in the office of the clerk of said court a certain transcript of the record and proceedings of the circuit court of Cook county and of the appellate court of Illinois, first district, in a certain cause wherein The Union Mutual Life Insurance Company was appellant and Elizabeth Kirchoff was appellee; which said transcript is in the words and figures following, viz:

2 UNITED STATES OF AMERICA:

STATE OF ILLINOIS, } *ss:*
County — Cook, }

Pleas before the Honorable Murray F. Tuley, one of the judges of the circuit court of Cook county, at a term thereof begun and held at Chicago, in said county and State, on the third Monday (being the 20th day) of June, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and eleventh.

Present: Honorable M. F. Tuley, one of the judges of the circuit court of Cook county, State of Illinois; Julius S. Grinnell, State's attorney; Canute R. Matson, sheriff.

Attest: HENRY BEST, *Clerk.*

Be it remembered that heretofore, to wit, on the 25th day of August, A. D. 1887, there was filed in said court a certain notice, and the following order was made and entered of record in said court; which said notice and order are in the words and figures following, to wit:

STATE OF ILLINOIS, } *ss:*
County of Cook, }

In the Circuit Court of said County.

3 ELIZABETH KIRCHOFF
vs. } In Chancery.
THE MUTUAL LIFE INSURANCE COMPANY OF MAINE.

To Messrs. Swett, Grosscup & Swett, solicitors for defendant:

Please take notice that on Thursday, the 25th day of August, 1887, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, we shall, before his honor Judge Williamson, in the room usually occupied by him as a court-room in said county, ask for leave to restore the files in the above-entitled cause by filing a copy of the original bill in place of said original, which is mislaid or lost, at which time and place you can appear if you see fit.

W. S. HARBERT AND
GEO. R. DALEY,
Solicitors for Compl't.

Chicago, August 24th, 1887.

Service of the above notice accepted this 24th day of August, 1887.

SWETT, GROSSCUP & SWETT.

Order.

ELIZABETH KIRCHOFF
vs.
THE UNION MUTUAL LIFE INSURANCE COMPANY. } Bill. 41522, 129.

4 This cause coming on to be further heard upon the motion of the complainant to restore certain of the files in said cause, and it appearing to the court that due notice of such application has been given to solicitors of the defendant, and said solicitors being present herein in court, and it further appearing that the original bill in this cause is lost or has been mislaid, and that a certain copy presented to the court is a true copy in substance of said original, it is ordered that said copy be filed instead of said original bill, to take the place thereof in all proceedings herein with like credit, force, and effect as said original.

And thereupon, on the same day, to wit, the 25th day of August, A. D. 1887, there was filed in the said court a certain bill of complaint, which is in the words and figures following, to wit:

Bill.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

In the Circuit Court of the said County of Cook.

To the honorable the judges of circuit court of the county of Cook, in chancery sitting:

Humbly complaining, showeth unto your honors your oratrix, Elizabeth Kirchoff, wife of Julius Kirchoff, of Chicago, in said
5 county, that on or about the eighth day of May, 1871, your oratrix, together with her said husband, borrowed of the Union Mutual Life Insurance Company, a corporation subsisting under the laws of the State of Maine, the sum of sixty thousand dollars, and to secure the payment thereof, with interest thereon, executed their promissory note, jointly and severally with one Angela Diversey, the mother of your oratrix, for said sum of money, payable to said company, and also a trust deed (to Levi D. Boone, as trustee) of a large amount of real estate in said county belonging to your oratrix, including, among other lots and parcels, the following-described lots of land, situate in Chicago, in said county, and known as lots two (2) and four (4), in block twenty-one (21), of the canal trustees' subdivision of the south fractional quarter section three (3), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian.

That afterwards, to wit, some time during the year eighteen hundred and seventy-eight, default having been made in the payment of said money, the said insurance company threatened to institute proceedings for the foreclosure of said trust deed and a sale of the real estate of your oratrix therein described.

That thereupon your oratrix, through her said husband as her agent, offered said company to release and quitclaim to said company all and singular her land and premises in said trust deed described, provided said company would allow your oratrix to redeem from said trust deed the said two lots of land hereinbefore
6 specifically described (one of which said lots was then, at that
time, occupied by your oratrix as a homestead) upon the payment of whatever sum of money the said lots, with the improvements thereon, should be valued by an appraiser, to be agreed upon by said company and your oratrix, and upon such terms of payment as the said company were at or about that time offering to purchasers of its real estate, to wit, in ten equal annual payments or installments, with interest until paid at the rate of six per cent. per annum, and to secure the payment of such instalments by a mortgage upon said lots, and provided, also, that the said company should take the land in said trust deed described belonging to your oratrix in full satisfaction of any claim of said company against your oratrix and her said husband on account of said promissory note and trust deed.

That the said company accepted said offer and agreed to allow such redemption of said two lots by your oratrix upon the terms proposed and for the consideration aforesaid.

That thereupon said company, in pursuance of said agreement, designated one James H. Rees, of said Chicago, as a proper and competent person to appraise the said two lots of land, and your oratrix, through her said husband, assented to the employment of said Rees for such purposes.

That thereupon the said Rees, together with one E. A. Warfield, the financial agent of said company, and R. B. Kendall, the attorney for said company, and your oratrix's said husband, visited
7 said lots, your oratrix contributing to the expense of said
appraisal, and the said Rees, after having viewed the said two lots, appraised the same as follows, to wit, said lot two (2), with the improvements thereon, at the sum of seven thousand five hundred dollars ($7,500) and said lot four (4) at the sum of two thousand five hundred dollars, of which appraisal the said Rees made report in writing to said company and of which the said company notified your oratrix, which said report, as your oratrix is informed and believes, is now in the possession of said company and to which your oratrix prays leave to refer.

That thereafter, upon examination of the title to said lots, it appeared that there were certain intervening liens and incumbrances upon the same, created after the execution of said trust deed and prior to the agreement hereinbefore set forth for such redemption by your oratrix; and it was thereupon represented to your oratrix by said company, through its attorney, that it would be necessary to foreclose said trust deed in order to make good title in said company to said lots of land before it could take a mortgage thereon

for said installments of redemption money, and it was thereupon agreed by and between the said company and your oratrix that the agreement for said redemption should not be executed until after the title had been perfected in said company by said foreclosure proceedings, but should be held in abeyance until after such foreclosure proceedings should be completed and the title to said lots become vested in said company discharged of such incum-
brances, &c., but that in the meantime your oratrix should
8 execute and deliver to said company her deed of release and
quitclaim as agreed upon and should interpose no defense to such foreclosure proceedings.

That afterwards, pursuant to the agreement aforesaid, your oratrix and her said husband executed, acknowledged, and delivered to said company a deed of release and quitclaim of all and singular the land and premises belonging to your oratrix described in said trust deed, including the said two lots hereinbefore specifically described, in and by which said deed it was in effect stipulated by your oratrix that said deed should not be construed to effect the right of said company to foreclose said trust deed, which said deed, as your oratrix is informed and believes, has since then been recorded in the recorder's office of said county, and to said deed or the record thereof your oratrix prays leave to refer, if it be necessary so to do.

And your oratrix further shows unto your honors that the said company, in pursuance of said agreement, afterwards prosecuted its suit in the circuit court of the United States for the northern district of Illinois for the foreclosure of said trust deed and obtained a decree of foreclosure and sale, under and by virtue of which said decree said lots were afterwards, to wit, on the 20th day of October, A. D. 1880, offered for sale by the master in chancery of said court, and were sold and struck off to said company as the highest bidder
at said sale as follows, to wit, said lot two (2) for the sum of
9 nine thousand dollars ($9,000) and said lot four (4) for the
sum of eight thousand dollars ($8,000), and that deeds of said lots have been issued and delivered to said company by the said master in chancery and have been recorded in said recorder's office.

That in said suit for foreclosure the said company procured the appointment of a receiver of all the land and premises involved in said suit, your oratrix making no defence to said suit, and that afterwards said receiver demanded possession of said lot two (2) which was occupied by your oratrix and her husband as a homestead, and applied to said court for a writ of assistance to put his said receiver in possession thereof.

That thereupon your oratrix, through her said husband, resisted said application for said writ of assistance and set up as defense to the application of said receiver an answer setting forth in substance the aforesaid agreement between said company and your oratrix, but said company, through its solicitors employed in said suit, supported the application of said receiver and wholly disregarded its agreement with your oratrix and procured the order of said court for the assistance of said writ, whereby your oratrix and her husband were compelled to vacate their homestead.

And your oratrix well hoped that upon the execution and delivery of said master's deeds of said lots to said company (which said deeds were issued on or about the twenty-first day of January, A. D. 1882) the said company would, in good faith, keep and perform the said agreement with your oratrix and convey said two
10 lots to your oratrix upon the terms aforesaid.

But now so it is that the said Union Mutual Life Insurance Company utterly refuses to carry out its said agreement with your oratrix and falsely and fraudulently claims to hold and own said two lots of land in fee-simple, absolute, free, and discharged of any equitable interest therein on the part of your oratrix, and seeks to de-rive your oratrix of her rights in the premises and refuses to convey to your oratrix the said lots of land or either of them upon the terms agreed upon as aforesaid, and gives out and pretends that no such agreement was ever made or entered into between said company and your oratrix; whereas your oratrix charges the contrary to be the truth, and that she is justly entitled to a conveyance of said lots from said company upon the terms aforesaid.

And your oratrix further shows unto your honors that she has in good faith kept and performed her part of said agreement for the redemption of said lots, so far as she has been able to do, by the delivering of her said deed of release and quitclaim to said company in full faith and reliance that the said agreement would be kept and performed by said company, and that she has always been and is now ready and willing to keep and perform the whole of said agreement on her part to be performed, but has been prevented by said company from so doing.

All which actings, doings, and pretences of said company are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your oratrix in the premises.

11 In farther consideration whereof and forasmuch as your oratrix is remediless in the premises at and by the strict rules of the common law and is relievable only in a court of equity where such things are perfectly cognizable and relievable, to the end, therefore, that the said Union Mutual Insurance Company may true answer make to all and singular the premises (but not under oath, the benefit whereof is expressly waived by your oratrix), and may be compelled by the decree of this court specifically to perform the said agreement with your oratrix and convey to her the said two lots of land hereinbefore specifically described, your oratrix being ready and willing and duly offering specifically to perform the said agreement in all things on her part, and that your oratrix may have such other and farther relief in the premises as the equities of her case may require and to your honors shall seem meet:

May it please your honors to grant unto your oratrix the people's writ of assistance of subpœna, directed to the said Union Mutual Life Insurance Company, commanding said company, at a certain day and under a certain penalty, to appear before your honors in this honorable court and there and then full, true, direct, and perfect answer make to all and singular the premises; and, further, to stand to, perform, and abide such further order and decree therein as to your honors shall seem meet.

And your oratrix will ever pray, etc.

ELIZABETH KIRCHOFF.

W. S. HARBERT,
Solicitor for Complainant.

12 STATE OF ILLINOIS, } ss:
County of Cook, }

Geo. R. Daley, being duly sworn, on oath says that he is well acquainted with the contents of the original bill filed in the case of Elizabeth Kirchoff against the Union Mutual Life Insurance Company, in the circuit court of Cook county, and that the foregoing is a true copy in substance of said original bill.

Affiant further says that he has made diligent search for said original bill, but has been unable to find the same.

GEORGE R. DALEY.

Subscribed and sworn to before me this 25th day of August, A. D. 1887.

JOHN STIRLEN, [NOTARIAL SEAL.]
Notary Public.

And be it remembered that heretofore, to wit, on the 12th day of June, A. D. 1882, there issued out of and under the seal of said court the people's writ of summons, directed to the sheriff of Cook county to execute; which said writ, with the sheriff's return thereon endorsed, *are* in the words and figures following, to wit:

Summons.

STATE OF ILLINOIS, } ss:
County of Cook, }

13 The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon the Union Mutual Life Insurance Company, if it shall be found in your county, personally to be and appear before the circuit court of Cook county on the first day of the term thereof to be holden at the court-house, in Chicago, in said Cook county, on the third Monday of July, A. D. 1882, to answer unto Elizabeth Kirchoff in her certain bill of complaint filed in said court on the chancery side thereof.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

[OFFICIAL SEAL.] Witness Jacob Gross, clerk of said court, and the seal thereof, at Chicago, in said county, this 12th day of June, A. D. 1882.

JACOB GROSS, *Clerk.*

Endorsed: Served this writ on the within-named Union Mutual Life Insurance Company by delivering a copy of this writ to Leonard Swett, attorney for said company, this 13th day of June, 1882, the president of said company not found in my county. O. L. Mann, sheriff, by J. H. Burke, deputy.

14 And afterwards, to wit, on the 22nd day of June, A. D. 1882, there was filed in said court a certain demurrer, which is in the words and figures following, to wit:

Demurrer.

In the Circuit Court of Cook County, June Term, A. D. 1882.

Elizabeth Kirchoff, Complainant,
vs.
Union Mutual Life Insurance Co., Defendant. } In Chancery.

The demurrer of Union Mutual Life Ins. Co., defendant, to the bill of complaint of Elizabeth Kirchoff, the above-named plaintiff.

State of Illinois,
Cook County, } *ss:*

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said plaintiff's bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bill, and for cause of demurrer showeth that the said complainant hath not in and by her said bill made or stated such a case as doth or ought to entitle her to any such discovery or relief as is thereby sought and prayed for from or against this defendant, in that the said 15 bill does not show a valid contract concerning the said land described in said bill of complaint and one which can be enforced neither in law or in a court of equity.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demand the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

SWETT and HASKELL,
Solicitors for Defendant.

And thereupon, on the 19th day of February, A. D. 1883, the following proceedings were had and entered of record in said court, to wit:

Order.

Elizabeth Kirchoff
vs.
Union Mutual Life Insurance Company. } 41522. 973. Bill.

This day came the parties, by their respective solicitors, and thereupon came on to be heard the demurrer of the defendant to the

complainant's bill of complaint in this cause, which was argued by counsel, and the court, being now fully advised in the premises, doth overrule the said demurrer and doth grant the defendant
16 twenty days from date in which to answer herein.

And thereupon, on the 9th day of March, A. D. 1883, there was filed in said court a certain answer, which is in the words and figures following, to wit:

Answer.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

In the Circuit Court of Cook County.

ELIZABETH KIRCHOFF *ats.* THE UNION MUTUAL LIFE INSURANCE COMPANY.	In Chancery. February Term, 1883.

The answer of The Union Mutual Life Insurance Company, defendant, to the bill of complaint of Elizabeth Kirchoff, complainant.

This defendant, reserving to itself all rights of exceptions to the said bill of complaint, for answer thereto says it admits that on or about the 8th day of May, 1871, said complainant, together with her husband, borrowed of this defendant the sum of sixty thousand dollars, and to secure the payment thereof executed the note and trust deed as in said bill set forth.

This defendant, further answering, says that it denies that
17 said complainant, through her husband or any one else, offered said company to release and quitclaim to defendant the lands and premises in said trust deed described provided said defendant would allow said complainant to redeem the two lots in said bill described from said trust deed upon the payment of whatever sum of money the said lots, with the improvements thereon, should be valued at by an appraiser to be agreed upon by the parties and upon the terms in said bill set forth or any other terms; and said defendant says that it denies that it accepted said pretended offer or any offer from said complainant, and denies that it agreed to allow such redemption of said two lots by said complainant upon any terms or for any consideration whatever. Said defendant denies that in pursuance of the agreement set forth in said bill it designated one James H. Rees as a proper person to appraise said lands; and said defendant has no information that said Rees, Warfield, and Kendall made any appraisal of said lots, as in said bill set forth, or that said complainant contributed to the expenses of such appraisal, and therefore denies the same.

Said defendant admits that there were incumbrances and liens on said lots other than the lien of said defendant and subsequent thereto, but defendant denies that it represented to the said complainant that it would be necessary to fore lose said trust deed be-

fore it could take a mortgage thereof for said pretended instrument of redemption money, as in said answer set forth; and said defendant denies that it at any time agreed with said complainant
18 that the agreement for redemption, as averred in said bill,
should not be performed until after the title to said lots had been perfected in said defendant; and said defendant denies that it agreed with said complainant that said agreement for redemption, as averred in said bill, should be held in abeyance until foreclosure proceedings should be completed and the title to said lots vested in said defendant discharged of the incumbrances.

And defendant denies that said complainant agreed that she would not interpose any defense to said foreclosure proceeding.

Said defendant denies that said complainant executed and delivered to said defendant any deed of release and quitclaim to said premises in pursuance of the agreement for redemption, set forth in said bill.

Said defendant admits that it prosecuted its suit for foreclosure in the circuit court of the United States and obtained a decree and purchased said property, as in said bill set forth, but denies that the same was done in pursuance of any agreement with said complainant. Said defendant admits that a receiver was appointed in said suit and obtained possession of said lots, but has no knowledge that the said defendant's solicitor in said suit procured the order compelling said complainant to vacate the said lots, and therefore denies the same. This defendant admits that it refused to convey said lots to said complainant, but denies that it seeks to deprive said complainant of any right belonging to her, and denies that its claim to said lots is false or fraudulent.

19 Said defendant denies that said complainant has in good faith kept and performed her part of said alleged agreement for redemption of said lots, and denies that the delivery of said deed of quitclaim and release by complainant to said defendant was upon the faith and reliance that the said alleged agreement of redemption would be kept and performed by said defendant, and denies that said complainant has heretofore or is now ready to perform her part of said alleged agreement, and said defendant says that said complainant has at no time made any tender of any amount whatever to said defendant.

And this defendant, further answering, says that by the statute of frauds and perjuries of the State of Illinois it is, among other things, provided that no action shall be brought whereby to charge any person upon any contract for the sale of lands, tenements, or hereditaments or any interest in or concerning them unless the agreement upon which such action should be brought, or some memorandum or note in writing, shall be signed by said party to be charged therewith or some other person by him lawfully authorized; and this defendant says that the pretended agreement set forth in the bill of complainant was not reduced to writing or signed by this defendant or by any one authorized by it so to do; and this defendant insists upon said statute and claims the same benefit as if *he* had pleaded the same; and this defendant, further answer-

ing, denies that the complainant is entitled to the relief or any part
thereof in said bill of complaint demanded and prays the
20 same advantage of this answer as if it had pleaded or de-
murred to said bill of complaint, and prays to be dismissed
with *his* reasonable costs and charges in this behalf wrongfully sus-
tained.

SWETT AND HASKELL,
Sol's for Def't.

And afterwards, to wit, on the 17th day of March, A. D. 1883, there was filed in said cause a certain replication, which is in the words and figures following, to wit:

Replication.

STATE OF ILLINOIS, }
Cook County, } *ss:*

In the Circuit Court of said County, February Term.

ELIZABETH KIRCHOFF }
vs. } In Chancery.
THE UNION MUTUAL LIFE INSURANCE COMPANY. }

The replication of Elizabeth Kirchoff, complainant, to the answer of The Union Mutual Life Insurance Company, defendant.

This repliant, saving and reserving unto herself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says—

That she will aver and prove her said bill to be true, cer-
21 tain, and sufficient in the law to be answered unto, and that
the said answer of the defendant is uncertain, untrue, and
insufficient to be replied unto by the repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by her said bill she has already prayed.

W. S. HARBERT,
Sol. for Complainant.

And afterwards, to wit, on the 21st day of March and the 26th day of June, A. D. 1883, the 21st day of September, A. D. 1885, and the 29th day of September, A. D. 1886, and the 10th day of March, A. D. 1887, the following, among other, proceedings were had and entered of record in said court, to wit:

Order of March 21, '83.

ELIZABETH KIRCHOFF *vs.* UNION MUTUAL LIFE INSURANCE COMPANY.	41522, 973. Bill.

22 On motion of solicitor for the complainant, it is ordered that this cause be, and it hereby is, referred to Arno Voss, Esq., one of the masters in chancery of this court, to take proof of all the material allegations in the said bill contained and report the same to this court with all convenient speed.

Order of June 26, 1883.

ELIZABETH KIRCHOFF *vs.* UNION MUTUAL LIFE INSURANCE COMPANY.	41522, 973. Bill.

And now, on this day, this cause coming on to be heard on the motion of complainant to require defendant and its solicitors, Swett and Haskell, to produce, upon the taking of testimony herein before Arno Voss, Esq., one of the masters in chancery of this court, the books and writings hereafter referred to, and it appearing to the court that such books and writings are material as evidence and pertinent to the issues in this cause, and it further appearing that good and sufficient cause has been shown for such application and order, that reasonable notice of such application has been given, and that such books and writings are in the possession or under the control of said defendant and its said solicitors, and the court, being fully advised in the premises, doth order, adjudge, and require the 23 said defendant and its solicitors, Swett and Haskell, to produce before Arno Voss, Esq., one of the masters in chancery of this court, for use by complainant upon the taking of testimony upon the reference heretofore made herein, the following books and writings, namely:

A certain appraisement in writing made by one James H. Rees, being a valuation by said Rees of the property and premises in the bill described, which appraisement bears date the latter part of 1878.

Certain letters and letter-press copies of letters written by the agent of said defendant at Chicago and mailed by said agents to the home office or principal place of business of said company; said letters relate to the loan by said company to the complainant or relate to the premises securing such loan and relating to business transactions between said company and complainant; the letters above embrace all correspondence between the Chicago office and the home office of defendant relating to the Kirchoff loan and matters growing out thereof and pertaining to the transactions set out in the bill herein, &c.

A certain deed sent by the officers or agents of said company at Chicago to the home office (not executed), being a conveyance of the property in the bill described to the complainant.

Order, September 21, 1885.

Elizabeth Kirchoff
v.
24 Union Mutual Life Insurance Company. } 41522, 264. Bill.

On motion of the solicitor for the complainant and notice filed, this cause is set for hearing on the next trial calendar of this court.

Order of Sept. 29, 1886.

Elizabeth Kirchoff
vs.
Union Mutual Life Insurance Company. } 41522, 129. Bill.

By agreement of parties, this cause is passed on the trial calendar of this court.

Order of March 10*th*, 1887.

Elizabeth Kirchoff
v.
Union Mutual Life Insurance Company. } 41522, 129. Bill.

On motion of solicitors for the complainant, it is ordered that leave be, and it hereby is, granted the complainant to amend her bill of complaint instanter.

And on motion of solicitor for defendant it is further ordered that the answer on file stand as the answer of the defendant to the amended bill.

And on motion of solicitor the replication on file to stand
25 to the answer to said amended bill.

And thereupon, on the same day, to wit, the 10th day of March, A. D. 1887, there was filed in said cause a certain amended bill, which is in the words and figures following, to wit:

State of Illinois, } *ss:*
County of Cook,

In the Circuit Court of the said County of Cook.

To the honorable the judges of the circuit court of said county, in chancery sitting:

Humbly complaining, showeth unto your honors your oratrix, Elizabeth Kirchoff, wife of Julius Kirchoff, of Chicago, in said county, that on or about the eighth day of May, 1871, your oratrix, together with her said husband and her mother, Angela Diversey,

borrowed of the Union Mutual Life Insurance Company, a corporation subsisting under the laws of the State of Maine, the sum of sixty thousand ($60,000) dollars, and to secure the payment thereof, with interest thereon, executed their promissory note jointly and severally for said sum of money, payable to said company, and also a trust deed (to Levi D. Boone, as trustee) of a large amount of real estate in said county belonging to your oratrix, including, among other lots and parcels, the following-described lots of land, situated in Chicago, in said county, and known as lots two (2) and four (4), in block twenty-one (21), of the canal trustees' subdivision of
26 the south fractional quarter section three (3), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian.

That afterwards, to wit, some time during the year eighteen hundred and seventy-eight (1878), default having been made in the payment of said money, the said insurance company instituted proceedings for the foreclosure of said trust deed and a sale of the real estate of your oratrix therein described.

That thereupon your oratrix, through her said husband, as her agent, offered said company to release and quitclaim to said company all and singular her land and premises in said trust deed described, provided said company would allow your oratrix to redeem from said trust deed that said two lots of land hereinbefore specifically described (one of which said two lots was at that time occupied by your oratrix as a homestead) upon payment of whatever sum of money the said lots, with the improvements thereon, should be valued — by an appraiser to be agreed upon by said company and your oratrix, and upon such terms of payment as the said company were at or about that time offering to purchasers of its real estate, to wit, in ten equal annual payments or instalments, with interest until paid at the rate of six per cent. per annum, and to secure the payment of such instalments by a mortgage or trust deed upon said lots, and provided also that *that* said company should take the land in said trust deed described belonging to your oratrix in full satisfaction of any claim of said company
27 against your oratrix and her said husband on account of said promissory note and trust deed.

That the said company accepted said offer and agreed to allow such redemption of said two lots by your oratrix upon the terms proposed and for the consideration aforesaid.

That thereupon said company, in pursuance of said agreement, designated one James H. Rees, of said city of Chicago, as a proper and competent person to appraise the said two lots of land, and your oratrix, through her said husband, assented to the employment of said Rees for such purposes.

That thereupon the said Rees, together with one E. A. Warfield, the financial agent of said company, and R. B. Kendall, the attorney for said company, and your oratrix's said husband, visited said lots, your oratrix contributing to the expense of said appraisal, and the said Rees, after having viewed the said two lots, appraised the same as follows, to wit, said lot two (2), with the improvements thereon, at the sum of seven thousand five hundred dollars ($7,500), and said lot four (4) at the sum of two thousand five hundred dollars, of which appraisals the said Rees made report in writing to said company and of which the said company notified your oratrix, which said report, as your oratrix is informed and believes, is now in the possession of said company, and to which your oratrix prays leave to refer.

That afterwards, pursuant to the agreement aforesaid, your oratrix and her said husband executed, acknowledged, and 28 delivered to said company a deed of release and quitclaim of all and singular the land and premises belonging to your oratrix described in said trust deed, including the said two lots hereinbefore specifically described, which said deed, as your oratrix is informed and believes, has since then been recorded in the recorder's office of said county, and to said deed or the record thereof your oratrix prays leave to refer if it be necessary so to do.

That thereafter, upon examination of the title to said lots, it appeared that there were certain intervening liens and incumbrances upon the same, created after the execution of said trust deed and prior to the agreement hereinbefore set forth for such redemption by your oratrix, and it was thereupon represented to your oratrix by said company, through its attorney, that it would be necessary to foreclose trust deed in order to make good title in said company to said lots of land before it could take mortgage thereof for said instalments of redemption money, and it was thereupon agreed by and between the said company and your oratrix that the agreement for said redemption should not be further performed until after the title had been perfected in said company by said foreclosure proceedings, but the further execution thereof should be held in abeyance until after such foreclosure proceedings should be completed and the title to said lots become perfected in said company discharged of such incumbrances, &c., and that in the meantime your oratrix should interpose no defense to such foreclosure proceedings.

29 And your oratrix further shows unto your honors that the said company, in pursuance of said agreement, afterwards continued the prosecution of its suit in the circuit court of the United States for the northern district of Illinois for the foreclosure of said trust deed and obtained a decree of foreclosure and sale, under and by virtue of which said decree said lots were afterwards, to wit, on the 20th day of October, A. D. 1880, offered for sale by the master in chancery of said court and were sold and struck off to said company at said sale as follows, to wit, said lot two (2) for the sum of nine thousand dollars ($9,000) and said lot four (4) for the sum of eight thousand dollars ($8,000), and that deeds of said lots have since been issued and delivered to said company by the said master in chancery and have been recorded in said recorder's office.

That in said suit for foreclosure the said company procured the appointment of a receiver of all the land and premises involved in said suit, your oratrix making no defense to said suit, and that on, to wit, the 16th day of November, 1881, said receiver demanded possession of said lot two (2), which was occupied by your oratrix and her husband as a homestead, and applied to said court for a writ of assistance to put him, said receiver, in possession thereof.

That thereupon your oratrix, through her said husband, resisted said application for said writ of assistance and set up as defence to the application of said receiver an answer setting forth in substance the aforesaid agreement between said company and
30 your oratrix, but said company, through its solicitors employed in said suit, supported the application of said receiver, and wholly disregarded its agreement with your oratrix and procured order of said court for the assistance of said writ, whereby your oratrix and her husband were compelled to vacate their homestead.

And your oratrix well hoped that upon the execution and delivery of said master's deeds of said lots to said company (which said deeds were issued on or about the twenty-first day of January, A. D. 1882) the said company would in good faith keep and perform its said agreement with your oratrix and convey said two lots to your oratrix upon the terms aforesaid.

But now so it is the said Union Mutual Life Insurance Company utterly refuses to carry out its said agreement with your oratrix and falsely and fraudulently claims to hold and own said two lots of land in fee-simple absolute, free and discharged of any equitable interest therein on the part of your oratrix, and seeks to deprive your oratrix of her rights in the premises and refuses to convey to your oratrix the said lots of land or either of them upon the terms agreed upon as aforesaid and gives out and pretends that no such agreement was ever made or entered into betwe-n said company and your oratrix.

Whereas your oratrix charges the contrary to be the truth, and that she is justly entitled to redemption of said lots and a conveyance from said company upon the terms aforesaid.

And your oratrix further shows unto your honors that she
31 has in good faith kept and performed her part of said agreement for the redemption of said lots, so far as she has been able to do, by the delivering of her said deed of release and quitclaim to said company, and has refrained from interposing any defense to said foreclosure proceedings in full faith and reliance that the said agreement would be kept and performed by said company, and that she has always been and is now ready and willing to keep and perform the whole of said agreement on her part to be performed.

All which actings, doings, and pretences of said company *is* contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your oratrix in the premises.

In further consideration whereof, and forasmuch as your oratrix is remediless in the premises at and by the strict rules of the common law and is re*cei*vable only in a court of equity, where such things are perfectly cognizable and re*cei*vable, to the end, therefore, that said Union Mutual Life Insurance Company may true answer make to all and singular the premises (but not under oath, the benefit whereof is expressly waived by your oratrix); that your ora-

trix may be allowed to redeem said premises according to the terms of said agreement; that said defendant may be compelled by the decree of this court to perform the said agreement with your oratrix and convey to her the said two lots of land hereinbefore specifically described according to the terms thereof, as before stated, and
account to your oratrix for the rents and profits of said prem-
32 ises since the date of said agreement, your oratrix being ready
and willing and duly offering to perform the said agreement
in all things on her part, and that your oratrix may have such other and further relief in the premises as the equities of her case may require and to your honors shall seem meet—

May it please your honors to grant unto your oratrix the people's writ of summons in chancery, directed to the sheriff of said county of Cook, commanding him that he summon the defendant, The Union Mutual Life Insurance Company, to appear before this honorable court on the first day of the July term thereof, to be held in the court-house, in Chicago, in said county, on the third Monday of July, A. D. 1882, then and there to answer this bill, &c.; and, as in duty bound, your oratrix will ever pray.

ELIZABETH KIRCHOFF,
By W. S. HARBERT, *Her Solicitor.*

W. S. HARBERT,
GEO. R. DALEY,
Solicitors for Complainant.

And afterwards, on the 12th day of July, A. D. 1887, there was filed in said cause a certain proposed amended bill, which is in the words and figures following, to wit:

Proposed Amended Bill.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of said County.

33 To the honorable the judges of the circuit court of said county of Cook, in chancery sitting:

Humbly complaining, showeth unto your honors your oratrix, Elizabeth Kirchoff, wife of Julius Kirchoff, of Chicago, in said county, that on or about the eighth day of May, 1871, your oratrix, together with her said husband and her mother, Angelo Diversey, borrowed of the Union Mutual Life Insurance Company, a corporation subsisting under the laws of the State of Maine, the sum of sixty thousand dollars ($60,000), and to secure the payment thereof, with interest thereon, executed their promissory note, jointly and severally, for said sum of money, payable to the said company, and also a trust deed (to Levi D. Boone as trustee) on a large amount of real estate in said county belonging to your oratrix, including, among other lots and parcels, the following-described lots of land, situated in Chicago, in said county, and known as lots two (2) and four

(4), in block twenty-one (21), of the canal trustees' subdivision of the south fractional quarter of section three (3), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian.

That afterwards, to wit, some time during the year eighteen hundred and seventy-eight (1878), default having been made in the payment of said money, the said insurance company instituted proceedings for the foreclosure of said trust deed and a sale of the real estate of your oratrix therein described.

That thereupon your oratrix, through her said husband as 34 her agent, offered said company to release and quitclaim to said company all and singular her land and premises in said trust deed described, provided said company would allow your oratrix to redeem from said trust deed said two lots of land hereinbefore specifically described (one of which two lots was at that time occupied by your oratrix as a homestead) upon payment of whatever sum of money the said lots, with the improvements thereon, should be valued at by an appraiser, to be agreed upon by said company and your oratrix, and provided also that said company should take the remainder of the land in said trust deed described belonging to your oratrix (other than the two before-mentioned lots) in full satisfaction of the indebtedness of your oratrix to said defendant beyond the amount at which said two lots should be so appraised; that said company accepted said offer and agreed to allow such redemption of said lots by your oratrix upon the terms proposed and for the consideration aforesaid.

That it was further agreed by and between your oratrix and said defendant, and in further consideration for such surrender and conveyance by her, that after receiving the said quitclaim deed from your oratrix the said defendant company would execute back to her a deed of conveyance of the two lots before described, and that your oratrix should be allowed to pay said redemption money in like manner and upon such terms as said company were at or about that time offering to purchasers of their real estate, to wit, in ten equal annual instalments, with interest at the rate of six 35 per cent. per annum until paid, the first of which instalments was to be paid upon the delivery of the deed to your oratrix and the remainder in one, two, three, four, five, six, seven, eight, and nine years thereafter, respectively, said deferred payments to bear interest at the rate of six per cent. per annum until paid, and that to secure said deferred payments your oratrix would execute and deliver to said defendant a mortgage on said two lots.

That thereupon said company, in pursuance of said agreement, designated one James H. Rees, of said city of Chicago, as a proper and competent person to appraise the said two lots of land, and your oratrix, through her said husband, assented to the employment of said Rees for such purpose.

That thereupon the said Rees, together with one E. A. Warfield, the financial agent of said company, and R. B. Kendall, the attorney for said company, and your oratrix's said husband, visited said lots, your oratrix contributing to the expense of said appraisal, and the said Rees, after having viewed the said two lots, appraised the same as follows, to wit, said lot two (2), with the improvements thereon, at the sum of seven thousand five hundred dollars ($7,500) and said lot four (4) at the sum of two thousand five hundred dollars, of which appraisals the said Rees made report in writing to said company and of which the said company notified your oratrix, which said report, as your oratrix is informed and believes, is now in the possession of said company, and to which your oratrix prays leave to refer.

36 That afterwards, pursuant to the agreement aforesaid, your oratrix and her said husband executed, acknowledged, and delivered to said company a deed and quitclaim of all and singular the land and premises belonging to your oratrix described in said trust deed, including the said two lots hereinbefore specifically described, which said deed, as your oratrix is informed and believes, has since then been recorded in the recorder's office of said county, and to said deed or the record thereof your oratrix prays leave to refer if it be necessary so to do.

That thereafter, upon examination of the title to said lots, it appeared that there were certain intervening liens and incumbrances upon the same, created after the execution of said trust deed and prior to the agreement hereinbefore set forth for such redemption by your oratrix, and it was thereupon represented to your oratrix by said company, through its attorneys, that it would be necessary to foreclose said first-described trust deed in order to make good title in said company to said lots of land before it could take a mortgage thereon for said instalments of redemption money, and it was thereupon agreed by and between the said company and your oratrix that the agreement for said redemption should not be further performed until after the title had been perfected in said company by said foreclosure proceedings, but the further execution thereof should be held in abeyance until after such foreclosure proceedings should be completed and the title to said lots become perfected in 37 said company discharged of such incumbrances, &c., and that in the meantime your orator should interpose no defense to such foreclosure proceedings.

And your oratrix further shows unto your honors that the said company in pursuance of said agreement continued the prosecution of its suit in the circuit court of the United States for the northern district of Illinois for the foreclosure of said trust deed and obtained a decree of foreclosure and sale under and by virtue of which said decree said lots were afterwards, to wit, on the 20th day of October, A. D. 1880, offered for sale by the master in chancery of said court and were sold and struck off to said company at said sale as follows, to wit, said lot two (2) for the sum of nine thousand dollars ($9,000) and said lot four (4) for the sum of eight thousand dollars ($8,000), and that deeds of said lots have since been issued and delivered to said company by the said master in chancery and have been recorded in said recorder's office.

That in said suit for foreclosure the said company procured the appointment of a receiver of all the land and premises involved in said suit, your oratrix making no defense to said suit, and that afterwards, on, to wit, the 16th day of November, 1881, said receiver demanded possession of said lot two (2) which was occupied by your oratrix and her husband as a homestead and applied to said court for a writ of assistance to put him, said receiver, in possession thereof.

That thereupon your oratrix, through her said husband, resisted
said application for said writ of assistance and set up as
38 a defense to the application of said receiver an answer setting
forth in substance the aforesaid agreement between said company and your oratrix, but said company, through its solicitors in said suit, supported the application of said receiver and wholly disregarded its agreement with your oratrix and procured an order of said court for the assistance of said writ, whereby your oratrix and her husband were compelled to vacate their homestead.

And your oratrix well hoped that upon the execution and delivery of said master's deeds of said lots to said company (which said deeds were issued on or about the twenty-first day of January, A. D. 1882) the said company would in good faith keep and perform its said agreement with your oratrix and convey said two lots to your oratrix upon the terms aforesaid.

But now so it is that said Union Mutual Life Insurance Company utterly refuses to carry out its said agreement with your oratrix and falsely and fraudulently claims to hold and own said two lots of land in fee-simple, absolute, free, and discharged of any equitable interest therein on the part of your oratrix, and seeks to deprive your oratrix of her rights in the premises, and refuses to convey to your oratrix the said lots of land or either of them upon the terms agreed upon as aforesaid, and gives out and pretends that no such agreement was ever made or entered into between said company and your oratrix, whereas your oratrix charges the contrary to be the truth and that she is justly entitled to a redemption of said lots and a conveyance from said company upon the terms aforesaid.

39 And your oratrix further shows unto *unto* your honors that
she has in good faith kept and performed her part of said agreement for the redemption of said lots, so far as she has been able to do, by the delivering of her said deed of release and quitclaim to said company, and has refrained from interposing any defense to said foreclosure proceedings in full faith and reliance that the said agreement would be kept and performed by said company, and that she has always been and is now ready and willing to keep and perform the whole of said agreement on her part to be performed.

All which actings, doings, and pretences of said company *is* contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your oratrix in the premises.

In further consideration whereof, and forasmuch as your oratrix is remediless in the premises at and by the strict rules of the common law and is relievable only in a court of equity, where such things are perfectly cognizable and relievable, to the end, therefore, that said Union Mutual Life Insurance Company may true answer make to all and singular the premises (but not under oath, the

benefit whereof is expressly waived by your oratrix); that your oratrix may be allowed to redeem said premises according to the terms of said agreement; that said defendant may be compelled by the decree of this court to perform the said agreement with your oratrix and convey to her the said two lots of land hereinbefore specifically described according to the terms thereof, as before stated, and account to your oratrix for the rents and profits of said premises
40 since the date of said agreement, your oratrix being ready
and willing and duly offering to perform *to* said agreement in all things on her part, and that your oratrix may have such other and further relief in the premises as the equities of her case may require and to your honors shall seem meet:

May it please your honors to grant unto your oratrix the people's writ of summons in chancery, directed to the sheriff of said county of Cook, commanding him that he summon the defendant, The Union Mutual Life Insurance Company, to appear before this honorable court on the first day of the July term thereof, to be held in the court-house, in Chicago, in said county, on the third Monday of July, A. D. 1882, then and there to answer this bill, &c.; and, as in duty bound, your oratrix will ever pray.

ELIZABETH KIRCHOFF,
By W. S. HARBERT AND
GEORGE R. DALEY,
Her Solicitors.

W. S. HARBERT &
GEO. R. DALEY,
Solicitors for Complainant.

And on the same day, to wit, the 12th day of July, A. D. 1887, the following, among other, proceedings were had and entered of record in said court, to wit:

Order of July 12th, 1887.

ELIZABETH KIRCHOFF
vs.
UNION MUTUAL LIFE INSURANCE COMPANY.
} 41522, 129. Bill and Amended Bill.

41 And now, on this day, come the said parties, by their respective solicitors, and this cause coming on to be heard upon the pleadings herein and testimony adduced in open court, the court, after hearing counsel for the respective parties and being now fully advised in the premises, finds that the complainant is not entitled to the relief prayed for in her amended bill of complaint herein.

And thereupon and after the court had announced its opinion the complainant, by her solicitor, asks leave to file an amended bill herein. The court, after hearing counsel for the respective parties and being now fully advised in the premises, doth refuse leave to file an amended bill and doth order, adjudge, and decree that the amended bill in this cause be, and it hereby is, dismissed out of this court at the complainant's cost for want of equity.

Therefore it is ordered and considered that the defendant have and recover of the complainant its costs in this behalf expended, to be taxed, and that execution issue therefor.

And thereupon the complainant, by her solicitor, prays an appeal to the supreme court of the State of Illinois, which is granted on condition that said complainant doth within sixty days from date execute and file a good and sufficient appeal bond in this cause in the penal sum of three hundred dollars, with surety to be approved by the court.

And it is further ordered that the complainant have sixty days from date in which to prepare and file a certificate of evidence herein.

42 STATE OF ILLINOIS, } *ss:*
Cook County, }

I, Henry Best, clerk of the circuit court of Cook county and the keeper of the records and files thereof in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete transcript of the record in a certain cause lately pending in said court, on the chancery side thereof, between Elizabeth Kirchoff, complainant, and The Union Mutual Life Insurance Company, defendant.

[COURT SEAL.] In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 30th day of August, 1887.

HENRY BEST, *Clerk.*

43 In the Supreme Court of Illinois, Northern District, Sept. Term, A. D. 1887.

ELIZABETH KIRCHOFF, Appellant,
vs.
UNION MUTUAL LIFE INSURANCE COMPANY, Appellee.
} Assignment of Errors.

And now comes the said Elizabeth Kirchoff, appellant, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

1. The court erred in not entering a decree in conformity with the prayer of the bill.
2. The court erred in dismissing complainant's bill for want of equity.
3. The court erred in refusing leave to file the proposed amended bill.
4. The court erred in refusing to grant complainant any relief whatever.
5. The court erred in admitting evidence over complainant's objections.

By reason whereof appellant prays that said decree may be reversed, etc.

W. S. HARBERT,
GEO. R. DALEY,
Solicitors for Appellant.

44 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } *ss:*
County — Cook, }

Pleas before the Honorable Murray F. Tuley, one of the judges of the circuit court of Cook county, at a term thereof begun and held at Chicago, in said county and State, on the third Monday (being the 20th day) of June, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and eleventh.

Present: Honorable Murray F. Tuley, one of the judges of the circuit court of Cook county, State of Illinois; Julius S. Grinnell, State's attorney; Canute R. Matson, sheriff.

Attest: HENRY BEST, *Clerk.*

Be it remembered that heretofore, to wit, on the 3rd day of October, A. D. 1887, there was filed a certain certificate of evidence in words and figures following, to wit:

STATE OF ILLINOIS, } *ss:*
County of Cook, }

In the Circuit Court of said County.

45 ELIZABETH KIRCHOFF, Complainant, *vs.* THE UNION MUTUAL LIFE INSURANCE COMPANY, Defendant. } In Chancery. 41522.

Be it remembered that at the regular term *term* of the circuit court of said county on the 9th day of March, A. D. 1887, before the Honorable Murray F. Tuley, judge of said court, sitting in chancery, came the complainant, by W. S. Harbert & Geo. R. Daley, her solicitors, and also at the same time came the defendant, by Swett, Grosscup & Swett, its solicitors, and, said cause being at issue on the bill, answer, and replication on file therein, the complainant offered and read in evidence the testimony taken and reported by Arno Voss, Esq., master in chancery, to whom said cause had theretofore been referred to take testimony and report (embracing the testimony of Julius Kirchoff, Edwin A. Warfield, Robert B. Kendall, Charles Klein, and Elizabeth Kerchoff); which said report and testimony are in words and figures as follows:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

ELIZABETH KIRCHOFF, Complainant,
vs.
46 THE UNION MUTUAL LIFE INSURANCE COMPANY OF MAINE, Defendant. } In Chancery.

To the honorable the judges of the circuit court of Cook county, in the State of Illinois, in chancery sitting:

In pursuance of an order of this court made in the above-entitled cause on the twenty-first day of March, A. D. 1883, whereby it was referred to the undersigned master in chancery of this court to take the proof of the respective parties and report the same to the court—

I, the said master in chancery, do hereby respect*ive*ly report that having first given a written notice to the said parties respectively of the time and place when and where the said testimony would be taken, and caused to come before me all such witnesses as the respective parties desired or — to me having represented by the solicitors of the respective parties, I did, commencing on the 13th day of April, A. D. 1883, at my office, in Chicago, of said Cook county, proceed to take the proofs of the respective parties, which examination was continued from time to time up to the present time, and, the several witnesses attending having been severally sworn by me and examined before me, I caused their testimony to be reduced to writing in short-hand and properly transcribed, and have attached the same hereto and make the same a part of
47 this report.

I would further report that during the progress of the taking of said testimony before me the respective parties introduced in evidence before me certain letters, deeds, memoranda, and other paper-writings mentioned in the record of said testimony, which, after having been properly marked as exhibits in said cause, were, according to stipulation between the said parties, retained by them respectively, to be produced before the court upon the hearing of said cause and used as evidence therein the same as if hereto attached, which stipulation I have hereto attached, marked Exhibit "A," and made a part of this report.

All of which is respectfully submitted.

Dated this 30th day of January, A. D. 1886.

ARNO VOSS,
Master in Chancery of the Circuit Court of Cook County.

Master's fees..	$124 30
Stenographer's fees....................................	126 40
	$250 70

Paid by complainant's solicitor.

ARNO VOSS, *Master.*

EXHIBIT "A."

STATE OF ILLINOIS, } ss:
Cook County, }

In the Circuit Court of Cook County.

48 ELIZABETH KIRCHOFF
vs.
UNION MUTUAL LIFE INS. CO.

It is hereby stipulated that the exhibits to the depositions offered in evidence — the above-entitled cause may be retained by the parties owning them, and that copies of the same in the body of the depositions or referred to as exhibits shall be taken as originals. It is also stipulated that letter-press copies of letters read in evidence by either party shall be considered as originals and that the copies of the same in the body of the depositions or set out as exhibits may be read in evidence with the same force and effect as though the original were produced, but subject to like objections.

It is also agreed that court files in the case of Union Mutual Life Ins. Co. *vs.* Kirchoff in the United States court need not be attached to said depositions, but that copies thereof in the body of the depositions and of filing endorsements thereon may be read in evidence as originals and subject to the objections.

It is also stipulated that sworn copies of such files and the endorsements thereon may be introduced as originals.

It is also agreed by the defendant that any exhibits in its possession will be produced at any time on request of complainant's solicitor.

W. S. HARBERT, *Sol'r for Complainant.*
49 SWETT, GROSSCUP & SWETT,
Sol'rs for Defendant.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

ELIZABETH KIRCHOFF, Complainant,
vs.
THE UNION MUTUAL LIFE INSURANCE COMPANY, Defendants. } In Chancery.

Before Arno Voss, master in chancery, circuit court, Cook county.

APRIL 13TH, 1883.

The parties met, and hearing was adjourned until the 17th inst.

April 17th, 1883—10 a. m.

W. S. Harbert, Esq., appears for complainant, and P. S. Grosscup, with Swett & Kaskell, appears for defendant.

Julius Kirchoff, called as a witness on behalf of complainant, having been first duly sworn, was examined by Mr. Harbert, and testified as follows:

50 Q. State your name.

A. Julius Kirchoff.

Q. What is your wife's name?

A. Elizabeth.

Q. Is she the complainant in this suit?

A. Yes, sir.

Q. Have you had any dealings with the defendant, The Union Mutual Life Insurance Company of Maine?

A. Yes, sir.

Q. Were such dealings made by you on your own account or as agent for your wife?

A. As agent for my wife.

Q. Did your wife borrow some money of the Union Mutual Life Insurance Company?

A. Yes, sir.

Q. How much?

A. Sixty thousand dollars.

Q. About when was that?

A. It was in May, 1871; May 8th.

Q. Did she borrow it alone or did some one else join with her in borrowing it?

A. Mrs. Angelia Diversey, my mother-in-law, joined with her. All three were in it.

Q. How was that money secured?

A. By land property.

51 Q. By a trust deed on land?

A. Yes, sir.

Q. Do you know who is the trustee in the trust deed?

A. I think it was Levi D. Boone first.

Q. For how many years was the loan?

A. I don't know exactly how many years we made it, but it kept on all the time. This was before the big fire, and it kept on all the time till we made that contract.

Q. What was the rate of interest, if you remember?

A. I don't know exactly how much it was at that time, when we made the loan first.

Q. What payment did you make, as you now remember, on that loan?

A. Oh, we made a great many payments. I sold one farm in 1872 and made a payment through Prussing of about three thousand dollars, $1,500 in cash and a deferred-payment note, secured by mortgage on the farm, something over $1,500 more.

Q. What other payments do you remember making?

A. Sold five acres of land afterwards and made some payments, shown in that paper.

Q. Look at the paper now shown to you and state whether that is a statement furnished you by Dr. Boone, the trustee, about May 8th, '73. (Hands same to witness.)

A. Yes, sir.

(Marked Complainant's Exhibit A.)

Q. Did you make payments after this time?

A. I don't know exactly; paid sometimes some, but don't recollect.

52 Q. Who were the agents of the defendant company here in Chicago from 1871 until after this trust deed which you have referred to was foreclosed?

A. Dr. L. D. Boone, E. A. Warfield, and R. B. Kendall.

Q. With which of these did you have most of your dealings?

A. Mr. Warfield.

Q. Did you or not have also dealings with Dr. Boone and Mr. Kendall?

A. Oh, yes, sir.

Q. About when did the company, through its agents here, threaten to foreclose the trust deed, if ever?

A. They were talking about it in '78; filed the bill in July, '78.

Q. Please describe generally the various tracts or parcels of property covered by the trust deed—the location of them.

A. There was a lot on Rose street, West Side; a brick building; No. 155 Fulton street.

(Objected to as not being the best evidence.)

A. In the rear of that brick building was No. 39 Leider street, a brick building; also a factory, a brick building, on Chicago avenue near Pine street; also a corner lot, Rush and Pierson streets; also another lot adjoining the same, the last two being the homestead.

Q. What was the size of the two lots together which made the homestead?

A. The corner lot is 60 by 44 feet and the other 39 by 80.

Q. They are adjoining?

53 A. The smaller lot is nearly in the rear of the other.

Q. Please proceed with your enumeration of the tracts of land.

A. 13 and one-tenth acres on Lincoln avenue and Diversey and other streets. I don't know exactly their names; they are called Lill's old farm—part of Lill's old farm; a large parcel on Clark street, in Gardiner's subdivision, Lake View.

Q. About how many acres were there in it?

A. I don't know. It was about 144 by 596 feet deep. I don't know exactly. That is about all the tracts I remember. There might be two on Rose street, but I don't know. It shows it all in that paper.

Q. Did you or not, at or about the time the foreclosure proceedings were instituted on said trust deed, make any agreement with the company looking towards a settlement of matters between the complainant and the defendant?

A. Yes, sir.

Q. Please state what that agreement was.

(Objected to as incompetent and it does not appear but what the agreement is in writing.)

A. I made the contract with them. They wanted a quitclaim deed on the consideration of the two lots, our homestead, which they agreed to, and in that way we gave a quitclaim deed in 1879. We made the contract that whatever their appraisal should be of the homestead we were to pay. It was appraised, one of the lots, the
corner, at $7,500 and the other at $2,500; it amounted to
54 $10,000, to be paid in ten years' time, one thousand dollars
a year. They agreed to it and we gave them a quitclaim
deed; then some time ago after that they tried to foreclose it. I didn't know what the attempt at foreclosure meant, as I thought the bargain was safe. I went up to the company and asked Mr. Warfield what they meant by the foreclosure. He said, "That is all right; it is exactly the same as we made the contract before; it was so much better to have it foreclosed, on account of keeping the mortgage safe for us." I saw Mr. Kendall that time, the lawyer for the company. He said he thought there were some judgments against that property, and to make it safer they had to make it safer by foreclosing, but I need not be afraid; it would be all right, and so it went on all the time, so far as I know. They told me they made out the deeds and sent them down to their headquarters; I think Boston—to their main office; whenever the deeds came back during that year they were to be delivered to us on paying $1,000; it took some time to have it ready, on account of that foreclosure; it was at six per cent. interest.

(Answer objected to and each part of it as immaterial and incompetent.)

Q. Who first saw you with reference to getting a quitclaim deed from you and your wife to the property?

A. Mr. Warfield.

Q. Do you remember whether that was before or after the foreclosure proceedings were commenced?

A. That was before.

55 Q. Under your agreement were you to relinquish all claim to everything except the homestead?

(Objected to as asking for a conclusion on the witness.)

A. Oh, yes; a quitclaim deed.

Q. What were you to give up to the company?

(Objected to as asking for a conclusion of the witness.)

A. Give them the quitclaim deed and keep the homestead, the two lots.

Q. Was the quitclaim deed to include the homestead?

(Objected to as asking for a conclusion of the witness.)

A. Yes, sir; everything was in there.

Q. On what basis were you to be allowed to redeem the homestead?

(Objected to as asking a conclusion of the witness and as immaterial and incompetent.)

A. By appraising the lots—the homestead—which was done at seventy-five hundred dollars for one lot and $2,500 for the adjoining lot, $10,000, a thousand dollars a year to be paid, at six per cent. interest. By paying $1,000 down the first year or upon their delivering the deed, as Mr. Warfield and Kendall told me, they would get the deed ready and send it up to the company.

Q. Did you mean they would get the deed ready or you would get it ready?

A. They would make the deed out and send it to their office and upon return deliver to us, paying upon the delivery of the deed or during the year one thousand dollars.

56 Q. Did you and the company's agents agree as to who should make the appraisement?

A. Yes, sir.

Q. Whom did you agree upon?

(Objected to as incompetent.)

A. The company had Mr. Rees.

Q. Who went with Mr. Rees, appointed to make the appraisal?

A. Mr. E. A. Warfield, Mr. Robert B. Kendall, and myself.

Q. Who furnished the team?

A. I.

Q. At how much did Mr. Rees appraise the two lots which comprised your homestead?

(Objected to as not appearing but what that appraisement is in writing.)

A. $7,500 for the corner lot and $2,500 the other, making $10,000 altogether.

Counsel for complainant states that he has served counsel for defendant with notice to produce the appraisement of Mr. Rees, above referred to, and that same has not been produced under such notice at the date of taking this testimony. Counsel agree that as the defendants have not yet had time to produce said paper, if any such paper exists, therefore, in case such papers or any other papers the contents of which shall be inquired about shall be produced by the defendants under said notice, the questions and answers eliciting their contents shall be stricken out before the testimony is written up. 57

Q. I understand you were to have the right to retain the property upon payment of the appraisement of the homestead. On what sort of payments were you to pay the amount of the appraisement?

(Objected to as incompetent and calling for a conclusion of the witness.)

A. Ten years' time; $1,000 during the first year, or upon the delivery of the deed, and one thousand dollars every year, with six per cent. interest; the first year $1,000, or upon delivering the deed whenever the deed was ready.

Q. You were to pay $1,000 during the first year, or when you got the deed?

A. Yes, sir.

Q. And the balance was to be paid in equal payments?

A. Yes, sir.

Q. As I understand it, you were to pay $1,000 during the first year, or upon the delivery of the deed?

(Objected to.)

A. Yes, sir.

Q. You were to pay $1,000 each year thereafter until the $10,000 had been paid?

(Objected to as leading.)

A. Yes, sir; at six per cent. interest.

58 Q. Did you deliver your quitclaim deed to the company?

A. Yes, sir.

Q. Did the company ever convey the homestead back to you?

A. No, sir.

Q. What was said or done with regard to the making out of the deed?

Objected to as indefinite and not showing with whom the conversation was had or by whom the acts were done.

A. They said they would make it ready here and send it to their main office; Mr. Kendall would make it ready and send it to the office.

Q. Who said that?

A. Mr. Kendall and Mr. Warfield.

Q. When was that?

A. 1879.

Q. Were you informed as to whether they did send it to the main office?

A. Yes, sir; Mr. Kendall told me so.

Q. Mr. Kendall told you they had sent it?

A. Yes, sir.

(Objected to, as it does not appear that information by Mr. Kendall should bind the company.)

Q. *Did the deed come back?

A. I never saw it.

Q. You have referred to a statement by Mr. Warfield in
59 regard to the foreclosure proceedings. When you expressed
surprise that they were going on with the foreclosure, please state your conversation with Mr. Warfield at the time.

(Objected to, as it does not appear that declarations by Mr. Warfield should bind the company.)

A. When we delivered the quitclaim deed after the time they foreclosed, I went to the office and saw Mr. Warfield. I asked him, What is that foreclosure for? He said I need not be afraid, it was all the same thing; it is for the better thing; it is better for us. He said, You can go and see Mr. Kendall. Mr. Kendall told me that he thought there were some judgments against the lots, and to make it safer he said they had to do it, foreclose it, it would be better for us when through with the process for a foreclosure, and that we should have the deeds after that.

(Answer objected to as stating a conversation that it does not appear the company should be bound by.)

Q. Did he say anything about that affecting your contract?
A. He said, That is all the same, the better; they had to go through the foreclosure, would be so much better——
Q. Better for what?
A. On account of the property, be better title.
Q. State who told you.
A. First I went to Mr. Warfield when I saw about the foreclosure. I asked Mr. Warfield what he was doing that for; our quit-
60 claim having been given, we expected our deed when the contract was made. He says, Well, this is all for the better. You see Mr. Kendall, and he will tell you distinctly why they did it. I went to Mr. Kendall, and he said he thought there were some judgments against the property, and to find this out and to make it better for us they did it, and I think they found nothing against it, and Mr. Kendall said it was better to make the foreclosure and find out whether there was a judgment against the property, and it would not at all affect the contract, and be all the same, but only be better for the property.

(Answer objected to as incompetent and as giving declarations that it does not appear the company authorized any one to make.)

Q. Had you authority from your wife to settle this matter?
A. Yes, sir.
Q. And in all that you did in that matter you acted as her agent?
A. Yes, sir.
Q. What was the reason you gave your quitclaim deed?

Objected to as incompetent.

A. I wanted to make a settlement and, on that consideration I gave them a quitclaim deed to have the two lots, the homestead back, which was done.
Q. You gave the quitclaim?
A. Yes, sir.
Q. After the foreclosure proceeding did they or did they ever give you back your homestead as they agreed to?

61 A. No, sir.

Q. How was it with reference to your ability and readiness to do your part of the contract?

A. I was ready whenever there was a delivery on our contract, any time.

Q. You were always ready to comply with your part, were you?

A. Yes, sir.

Q. Did the company, by its officers and agents, come to you and solicit the quitclaim?

Objected to as indefinite.

A. Yes, sir.

Q. Who came to you to solicit it?

A. Mr. Warfield.

Q. Was that contract the only consideration for the quitclaim deed you gave?

A. The contract that we wanted those two lots back—the homestead.

Q. Was that all the consideration?

A. That was the consideration.

Q. Did they deliver back to you the quitclaim deed which you had given them?

A. No, sir.

Q. Is that quitclaim deed recorded?

A. Yes, sir.

Q. What reason, if you know, did the company assign for not complying with the contract?

62 Objected to as incompetent and indefinite.

A. They said they sent the deed to the main office and did not have it back yet.

Q. Who said that?

A. Mr. Warfield and Mr. Kendall.

Q. Afterwards was anything said by Mr. Warfield or Mr. Kendall with regard to having word from the home office to the effect that they wanted you to pay more money down or anything of that kind? If so, state what was said.

Objected to as leading and incompetent.

A. Mr. Kendall said that he had answer that they wanted more money. I answered him that I stuck to my contract that I had made, and upon delivery of the deed I am ready.

Q. Upon the delivery of the deed you were ready?

A. Yes, sir.

Q. Ready to comply with your part of the contract?

A. Yes, sir.

Q. Did Mr. Warfield state anything about that same matter?

A. He said the same—that it would be all right; that I would have the right to the same contract.

Q. What, if anything, did you say to Mr. Kendall or Mr. Warfield when they told you that the company wanted a larger sum down?

A. I told them that I stuck to that contract—the contract that I
had made with Mr. Warfield and Mr. Kendall—and I have never
done any business with anybody except with the agents here,
63 and I thought the same as with the men down there, and I
said, We have made our contract and we will stick to that;
but they never showed that deed to me. I told them I was ready
at any time upon delivery of the deed to pay the $1,000.

Objected to as irresponsive and incompetent.

Q. That is when they would deliver up the deed?

A. Yes, sir.

Q. You were ready to deliver up your mortgage and pay your $1,000 down. Have you been ready ever since to comply with your part of that contract?

A. Yes, sir.

Q. What have you done since that time towards urging the company to comply with the contract?

A. As I could not get my papers, I stopped them last year, the 12th of June—to stop them from delivering the property to other parties.

Q. You brought this suit, you mean?

A. Yes, sir.

Q. Did the company, before you brought the suit, through its officers here, know that you were ready to comply?

A. Oh, I told them.

Q. How often?

A. Oh, very often; Mr. Warfield and Mr. Kendall.

Q. When did the company get its deed of the property from the master, if you know?

64 A. On the 21st of January, 1882.

Q. Where was the foreclosure suit brought, in what court?

A. In the United States court here.

Adjourned to Friday, April 20th, 1883, at 2 p. m.

Julius Kirchoff.

May 2nd, 1883.

Cross-examination by Mr. Grosscup:

Q. What relation is Mrs. Diversey to your wife?

A. She is my wife's mother.

Q. How many children had she—brothers and sisters of your wife?

A. I don't know how many children there were; there are four living.

Q. How many were there living in 1871, when this money was borrowed?

A. Four.

Q. She owned a part of this land that was mortgaged?

A. Yes, sir.

Q. And your wife owned a part of the land that was mortgaged?

A. The land we mortgaged was our own and she joined with us.

Q. On her land?

A. Yes, sir.

65 Q. In order to make the security better?

A. The security was over $100,000 alone, and her security was extra.

Q. You gave only one trust deed at the time the loan was obtained?

A. Yes, sir.

Q. And that trust deed covered her property as well as your property?

A. Well, I don't know anything about that. I know we gave a trust deed.

Q. Didn't she join in the same trust deed?

A. We gave a trust deed to L. D. Boone.

Q. And didn't your mother-in-law join in that trust deed?

A. Yes, sir; with her property.

Q. So that the one trust deed covered the property that she gave and the property that you gave?

A. I think so.

Q. Now, she had some property that was not covered by that trust deed?

A. I don't know anything about hers.

Q. You had some property that was not covered by the trust deed?

A. No, sir; we gave everything that we had. I think my mother-in-law put all her property in, but I don't know; I never inquired.

Q. When this property was bid off by the company this homestead property was bid off at $17,000, was it not?

66 A. So I understood.

Q. Was that as much as it was worth, in your judgment?

A. I don't know.

Q. You claim to have had an agreement from the company to get it back at $10,000?

A. Yes, sir.

Q. Was $10,000 as much as it was worth?

A. I don't know; I never inquired about the price.

Q. You knew nothing about the value of the property?

A. I don't know what it was worth.

Q. You had no judgment as to its value?

A. I had a judgment that it was worth $10,000.

Q. When it was sold?

A. I never knew anything about it when it was sold.

Q. It was sold in 1880. Was it worth as much as $17,000 at that time?

A. I don't know.

Q. Don't you know what its value was then?

A. I don't know.

Q. Can you put any estimate on it?

A. I never did. I made my bargain for the price I have said and never inquired any more after it.

Q. So you can't tell how much it was worth at that time?

A. I don't know; I never inquired.

Q. Do you know anything about the values of real estate
67 at all in the city?

A. I never trouble myself about it.

Q. You have dealt in real estate—bought and sold?

A. I have.

Q. Do you — anything about their values in 1880?

A. I have not inquired about it.

Q. Do you know anything about present values of your own knowledge?

A. No; the bargain I made was in 1879.

Q. I am not speaking of the bargain. I am speaking of the value of real estate.

A. I don't know anything about the value of real estate. I have heard that property has gone a little higher, but I never bother myself about it.

Q. You think it is higher?

A. I think so; it ought to be.

Q. Is this property worth more than $10,000 now?

A. I think it is; I should not wonder if it is.

Q. Is it worth $15,000?

A. Perhaps more than that, but I don't know.

Q. In 1879 real estate was not worth so much?

A. No.

Q. It was not worth so much in 1880 as it is now?

A. No; it was not.

Q. All these contracts that you claimed were made were
68 made with Mr. Kendall and Mr. Warfield?

A. Yes, sir.

Q. You made them yourself?

A. Yes, sir; I did.

Q. Your wife didn't negotiate at all?

A. I always made the bargain myself. My wife never did any business with them. I did it.

Q. And nobody else did any business in connection with the homestead but yourself?

A. No, sir.

Q. When did you say that you executed the quitclaim deed to the company?

A. On the 4th of September, 1879.

Q. Was that to close up your deal with the company?

A. Oh, no.

Q. What else were they to do?

A. I only agreed to give the quitclaim deed. It had been talked about from 1878, all the time. I gave the quitclaim deed on this arrangement only to get the homestead back.

Q. Was the company to go on and sell the rest of the land?

A. There never was anything said about that.

Q. Were they to go on and foreclose the rest of the land?

A. Nothing was said about that.

Q. You expected them to foreclose the balance of the property?

A. Oh, the quitclaim deed was made that they give me
69 my homestead back.

Q. You gave the quitclaim deed of all your real estate?

A. Yes, except the two lots, whatever they would be appraised at.

Q. The quitclaim deed covered those?

A. We gave them a quitclaim deed on the whole of the property except whatever they would be appraised at, and we take the homestead back.

Q. Were the other lots appraised?

A. Yes, sir; everything.

Q. The homestead lots and all the other lots were appraised?

Plaintiffs objects to any inquiries of the contents of the appraisement, as it appears that the defendant company has possession of the appraisement inquired about, which is in writing.

A. Yes, sir.

Q. You knew that they would have to proceed to foreclose the balance?

A. Yes, sir.

Q. After you first talked about it you found out that they would have to foreclose, didn't you?

A. I found out afterwards that they did foreclose.

Q. Didn't you find out that they would have to foreclose?

A. I never knew anything about it when I made my contract with them.

Q. They filed a bill to foreclose, didn't they?

A. They filed a bill in 1878.

Q. To foreclose?

A. I don't know.

70 Q. Wasn't it to foreclose those mortgages in 1878?

Objected to, as it is not shown that there were any mortgages.

A. They filed a bill, but I don't know whether it was to foreclose.

Q. Did you never look to see what that bill was for?

A. I don't know; I don't remember.

Q. Did you inquire?

A. No, sir.

Q. Do you swear that you don't know what that bill was filed for?

A. Yes, sir.

Q. You were served with process?

A. I think I was.

Q. And your wife was?

A. Rather me; my wife never was served.

Q. You knew that there was a bill pending against you after you got that notice?

A. I may have. I don't remember——

Q. You knew what that notice meant?

A. No, sir; I did not.

Q. Didn't you know that that notice meant for you to go to court?

A. I think it was.

Q. Do you mean to say that you never inquired what the proceedings was against you?

A. No, sir.

Q. Did you ever inquire?

A. I don't think I ever did.

71 Q. You don't know what that bill was for?

A. I don't remember exactly.

Q. Didn't you know it was to foreclose these trust deeds?

Objected to, as it is not shown that there was more than one trust deed.

A. I don't know; we had a good many transactions.

Q. You didn't inquire?

A. I may and I may not. I don't know.

Q. There was another bill filed afterwards, was there not?

A. I don't know.

Q. You were served with a process afterwards—a notice that there was some other bill filed against you in 1880?

Objected to as not the best evidence.

A. What bill do you mean?

Q. Didn't you receive a notice from the marshal*l* of the United States, or one of his deputies, that there was another bill filed against you in 1880?

Objected to, as it does not appear what suit counsel is inquiring about, who were complainants, what was the scope of the bill, what it related to, who were parties to it, and it is altogether indefinite, uncertain, and misleading.

A. I don't remember.

Q. Didn't you know that the Union Mutual Insurance Company was going on to foreclose in 1880?

A. Yes; I remember they sold the property in October, 1880.

72 Q. Didn't you know that before that they were going on to foreclose?

A. I don't remember.

Q. Didn't you inquire at that time?

A. No, sir.

Q. Did you pay no attention to the proceedings at that time?

A. I never knew anything of them.

Q. Do you mean to tell me that between July, 1878, and October, 1880, you didn't know that the Union Mutual Insurance Company was proceeding to foreclose against you?

A. They filed the bill in July, 1878.

Q. But you say you don't know what that bill was for?

A. No, sir; I knew they had a bill against us, but I didn't know anything about it.

Q. You didn't know that they were asking for an order to sell?

A. I understood they did; that they wanted to sell.

Q. When did you understand that?

A. Some time before that, but I don't remember.

Q. Didn't you have any conversations with anybody about that foreclosure?

A. After we gave a quitclaim deed, September 14th, 1879, I found out that they did want to foreclose. I went up to their office and asked Mr. Warfield what they meant—that foreclosure—as we had
made a bargain about our property; he says, "It is all right;
73 go to Mr. Kendall and he will tell you everything about it."
We had made our contract before that we take that property at whatever the appraisal was at that time and take it at ten years' payment, $1,000 each year. They were to have the deeds ready; they said they would send the deed to the main office, and upon delivery of the deed I pay them $1,000 and $1,000 each year for ten years.

Q. But that conversation was in September. Didn't you know they were proceeding to foreclose?

A. I went to the office on that account and they said it would be better for me to have the company foreclose. I went there and asked them. Our contract was made before by appraisal, that we take that property for $10,000 at ten years' time, and after I found out that they wanted to foreclose the property I went to Mr. Warfield and asked him why they wanted to make so much trouble about that homestead. He said, "It is so much better for you. We found out there are some judgments against you, and to make it better we are going to have this foreclosed."

Q. That was in September, 1879?

A. Yes; 1879 or 1880.

Q. Was it September, 1879 or 1880?

A. September 14th I gave the quitclaim deed. This conversation was in 1879 or 1880.

Q. You don't recollect the date?

A. During 1879 or 1880.

Q. You can't come any more definitely than that?

74 A. I think I could come to 1880.

Q. This conversation that you have just related was in 1880?

A. Yes, sir.

Q. Then you knew that they were going to foreclose the balance of your property?

A. That is the reason I went to inquire.

Q. You expected to get this homestead back in your own name?

A. That was our contract. To get the homestead on that condition only I gave the quitclaim deed with my wife.

Q. And after that you understood that they were going to foreclose the balance of the property?

A. They foreclosed everything.

Q. Now, suppose they had foreclosed the balance of the property and it didn't meet the debt, what was to be done?

A. What debt?

Q. The amount of the debt.

A. The idea was to give them the quitclaim deed, and whatever the appraisal would be we would take our property at that price and ten years' payment.

Q. There was a debt against you of some $60,000. Was that debt to be cancelled?

A. They figured up their amount, whatever they had against us, and whatever the appraisal was of the homestead would have been left for us to pay off, and that would settle with the company.

75 Q. That debt was to be cancelled?

A. Certainly.

Q. They were to have no further debt against you?

A. Yes; they were to take mortgage from us for the homestead.

Q. No other debt against you?

A. Never owed them anything.

Q. They were to cancel all the indebtedness against you except the mortgage you were to give on the homestead?

A. Certainly we were to give them the mortgage on the homestead.

Q. And they were to cancel all the rest of the debt?

A. We made our bargain.

Q. You didn't intend to take that homestead in your own name and then let them go on and foreclose the balance of the property as against these lienholders, and if the property didn't sell for enough to pay the balance of the lien that they could get a deficiency judgment against you and come on the homestead?

A. We made the arrangement with the company so that the company knew exactly the price. They had plenty of security all the time and they would get it all, too, as I understand it.

Q. They were not to sell the property and take any deficiency judgment against you?

A. No judgment against us. I never made that bargain. I never made any bargain of that kind.

Q. You understood that they were to do that?

76 A. Never talked about that.

Q. You were to turn over property and they were to cancel their debt and give you back the quitclaim deed to the homestead?

A. No; give them the quitclaim deed and we were to buy that homestead for the $10,000 and pay a $1,000 a year for ten years.

Q. With whom did the first conversation occur about your getting back your homestead?

A. Mr. Warfield.

Q. When?

A. In 1878, I think.

Q. Do you remember where it was?

A. I think it was at their office.

Q. Do you know who was present?

A. No, sir.
Q. Was the agreement made then?
A. No; we made the agreement afterwards.
Q. When was the next conversation?
A. We talked several times.
Q. When did you make the agreement?
A. That was in 1879.
Q. What time in 1879?
A. I don't know exactly; I can't remember. Either 1878 or 1879.
Q. Where was the appraisement made?
A. Right down in front of the property.
Q. Who was present?
77 A. Mr. Kendall and Mr. Rees, Mr. Warfield and I, we first appraised the property.
Q. That was the time you made the bargain that you were to get back the homestead, was it?
A. Several times we made the bargain; that was the time we appraised the property.
Q. When did you make the bargain to get back the homestead?
A. I think it was 1878 or 1879.
Q. Where were you when you made that bargain?
A. I can't remember exactly where we were.
Q. Were you in a house?
A. I shouldn't wonder; I was in their office.
Q. Do you know who was present?
A. I don't know.
Q. Was Mr. Kendall there?
A. I don't remember.
Q. Was Mr. Warfield there?
A. Yes.
Q. Who else was present?
A. There were frequently parties; I don't remember.
Q. And you can't say whether it was in the office?
A. I think it was in the office.
Q. Who was present?
A. There were several parties present.
Q. Do you remember their names?
78 A. No, sir.
Q. Did you know them at the time?
A. I don't know.
Q. You don't recollect?
A. I don't know who was there; I didn't inquire who was the next man behind the desk.
Q. Do you recollect what time of the day it was?
A. I don't know.
Q. Was it in the forenoon or the afternoon?
A. I don't remember that.
Q. Do you recollect whether they talked about anything else than this bargain?
A. I do not.

Q. Do you recollect what you first said to Mr. Warfield?

A. I don't remember what I said first or what he said first.

Q. Do you remember what either of you said second?

A. I don't know.

Q. Do you remember any of the conversations?

A. What do you mean?

Q. This time when you made the agreement.

A. We made our agreement that we should have the property appraised.

Q. I am asking if you remember any of the conversation.

A. We talked about the property—about appraising it.

Q. Did you speak about that first?

79 A. I don't remember whether I spoke first or Mr. Warfield did.

Q. Do you recollect what you said to him?

A. I remember that I said to him that I didn't see why they wanted to make trouble by that foreclosure.

Q. Don't you know what you said first that day?

A. I don't remember.

Q. Do you remember what was said the day the agreement was made?

A. He said, We will send the deed up to the main office and have it come back.

Q. Is that all that he said?

A. He said, after the appraisal, they would send the deed up to the office and come back and pay the money.

Q. Was that all that was said that day?

A. A good deal was said, but I don't remember every word.

Q. That was the date the contract was first made?

A. We talked several times about that.

Q. But this was the first time that you talked that I am inquiring of?

A. We talked several times about that contract; we agreed on the contract.

Q. Do you remember the first time you talked about it?

A. I don't remember the first time.

Q. Do you remember the first, second, third, or fourth time that you talked about it?

80 A. I don't remember the first time. I remember that we made that contract.

Q. Do you remember where you were?

A. I think it was in their office.

Q. Do you remember what was said the day you made it?

A. I don't remember every word of it; no, sir.

Q. Do you remember what he said?

A. I know so much that we agreed on that contract.

Q. But you don't remember what was said?

A. I remember that he said that that contract should be fulfilled.

Q. Do you recollect the conversation on any particular day?

A. For several days we had spoken of the same thing.

Q. Do you remember any single conversation when you talked about that contract?

A. I do not know, sir.

Q. On none *on* these occasions do you remember who was present?

A. There were several parties in the office; some of the clerks, I think. It — not my business with the clerks. I did the business all the time with the agent.

Q. You don't remember a single date?

A. I never took anything down about them.

Q. You don't remember whether these conversations occurred in the office or out of doors?

A. It was in the office; yes.

Q. You don't remember what time of day it was?

A. During the day.

81 Q. Forenoon or afternoon?

A. Oh, during the day.

Q. You don't remember the particular conversation on any one of these occasions; you can't repeat a single conversation in which that contract was made?

A. The contract was made, as I said before.

Q. But you can't repeat a single conversation you had with Mr. Warfield or Mr. Kendall, can you?

A. I know that I made the contract with Mr. Warfield.

Q. Can you repeat a single conversation that you had with Mr. Warfield or Mr. Kendall?

A. Do you mean by the date?

Q. No; by the words—by what you said and by what he said.

A. I know that we made our contract, that we take it at that appraisal.

Q. Can you go on and say what he said and say what you said in a single conversation on any of these occasions?

A. Yes; that we take it at that price, what the appraisal was, and that it was $1,000 a year for ten years, and Mr. Warfield said the company would make out the deed and send it to the main office to have it executed, and upon delivering the deed we pay them the $1,000.

Q. Is that all you can recollect of all those conversations?

A. There was a good deal besides, but that is what I remember as the main thing.

82 Q. Can you recollect now anything else between you and Mr. Warfield and you and Mr. Kendall as to what you have repeated?

A. There was a good deal said, but I can't remember much.

Q. You can't remember it?

A. Not everything.

Q. And you can't remember on what occasions these things were said?

A. It was made between us at their office.

Q. There was a judgment against your mother-in-law, Mrs. Diversey?

A. I don't know.

Q. Wasn't there a judgment against her?

A. I don't know.

Q. Don't you know that the company got a judgment against her?

A. No, sir.

Q. You never heard of that?

A. No, sir.

Q. Never heard of that since?

A. No, sir.

Q. Did Mrs. Diversey make a quitclaim deed?

A. I don't know.

Q. Didn't she make a quitclaim deed at the same time you did?

A. I don't know.

Q. You don't know?

A. No, sir.

83 Q. You don't know anything about her negotiations with the company?

A. No, sir.

Q. Although she was on the same debt with you?

A. No, sir.

Q. Never inquired of anybody?

A. No, sir.

Q. Never inquired of Kendall or Warfield?

A. No, sir.

Q. Paid no attention to her negotiations with the company?

A. I didn't know anything about it.

Q. Didn't care whether she got out of that loan or not?

A. I did care, but I didn't know.

Q. Did you get all the money of the loan?

A. Yes.

Q. She simply went on to secure you?

A. We had plenty of property; we had a $100,000 besides her property.

Q. But she was not getting any portion of the money; she went in because the company wanted more security than your property?

A. I know she went in.

Q. And although she went in to the extent of some $60,000 to $90,000, you didn't know anything about her negotiations with the company?

A. Never knew anything about her settling anything at all.

Q. And you never inquired of her?

84 A. No, sir.

Q. How close together were you living?

A. In the same house.

Q. And you never had a conversation with her about it?

A. No, sir.

Q. This thing was running on over a period of two years, wasn't it, while you were trying to get this settlement?

Objected to as not being shown that this witness ever tried to get settlement.

A. I never tried to settle it.

Q. Who tried to settle it?

A. They came to me; the company offered me to give the quitclaim deed and they give us the homestead.

Q. During that time from the time the first bill was filed in 1878 up to 1880, when the property was sold, you never had any conversation with Mrs. Diversey?

A. No, sir; not about this.

Q. You never asked how she was getting out of this loan for which she was security for you?

A. Never asked her; never bothered myself about it.

Q. During all that time she ate at the same table with you?

A. Yes, sir; during part of 1879.

Q. And lived in the same family?

A. Yes, sir. I gave them over double the amount of the property
in value besides Mrs. Diversey's property; we gave double
85 the amount of the property for the loan that we had received
from the company at that time.

Q. About the only thing you do recollect of this loan from 1878 up to 1880 was the fact of the making this contract by which you were to get your homestead back?

A. Made that contract in that way to give them the quitclaim deed. I recollect when we took the money.

Q. You don't recollect any other conversation?

A. We never had any other conversation except sometimes when I gave them money.

Q. Did you ever have to remind Mr. Warfield or Mr. Kendall what the contract was?

A. No, sir.

Q. Did you never call on them to tell them what you understood the contract to be?

A. No, sir.

Q. Did you never after September, 1879, tell them that you were to get the quitclaim deed from the company—that you understood the contract that way?

A. I gave them a quitclaim deed.

Q. After that?

A. Never told them anything about it except my contract, which was talked about between us.

Q. You knew that there were liens on the property besides the
Union Mutual lien?

86 A. That is what I understood. I went to Mr. Warfield;
Mr. Warfield sent me to Mr. Kendall, and he said that there were some judgments against it and they wanted to settle them up, and it would be better for me to get that all in order to settle them up.

Q. Didn't you know that there were some liens on the land before that?

A. I paid them all up.

Q. There were no other liens?

A. They told me there were.

Q. Did you pay them before you executed your quitclaim deed?

A. Oh, ye*t*; they inquired about that and found out that they were all paid.

Q. When did you pay them up?

A. I don't know; I paid them through the court, and Mr. Kendall found out that they were all paid; they thought they had a judgment of Runyan's against us and they wanted to find out to make the property in a better shape and give the company a better mortgage to clear that up.

Q. Didn't you know that there were some judgments against you except that Runyan's judgment?

A. When?

Q. Back in 1877, 1878, and 1879, against your property and your wife's property and your mother-in-law's property.

A. Do you mean my business?

87 Q. I mean on your land and your wife's land—the land that was covered by this trust deed.

A. I don't remember that.

Q. Didn't they have to make a number of people parties defendant to that first bill?

A. Yes, sir.

Q. Well, those were judgment creditors, were they not?

A. They were all settled.

Q. Did you represent so to the company?

A. The company found out themselves it was settled.

Q. Did you tell Kendall they were settled?

A. No, sir; Kendall told me. I knew it.

Q. Do you remember when you first told them they were all settled?

A. I don't remember that.

Q. So that at the time this agreement that you claim was made Mr. Kendall and Mr. Warfield and you thought that all that would be necessary to give the company a clear deed to the land would be the quitclaim deed from you and your wife?

A. Except to get our homestead.

Q. That by giving a quitclaim deed from you and your wife they would get a clear deed for the land?

A. Yes; except that we were to have our homestead back.

Q. At the time that you made the quitclaim deed you supposed your
land was all clear from other liens; that there were no judg-
88 ments or mortgages on it except the Union Mutual's?

A. Yes, sir.

Q. And you told that to Kendall and Warfield?

A. I never told them anything. They all knew it.

Q. You talked with them about that matter?

A. Oh, yes.

Q. And you all agreed to that?

A. Yes, sir.

Q. It turned out afterwards that that was not so?

A. They said so; I don't know. The judgments which were against me had been paid off at that time.

Q. Do you know what was due on the debt at that time when you talked with Warfield?

A. No, sir; I don't.

Q. Could you give us within $10,000 of what was due?

A. No, sir; I couldn't.

Q. You didn't know?

A. No, sir.

Q. You didn't know what the value of your land was, either?

A. Except what it was appraised at.

Q. How many times did the company appraise it?

A. So far as I know, once.

Q. That is the time that you went with Rees?

A. Yes, sir.

Q. Do you recollect when that was?

89 A. I think it was either in 1879 or 1878.

Q. Was it before or after you made the quitclaim deed?

A. It was before.

Q. Did Warfield pay you for taking them out that time?

A. I paid that.

Q. Didn't you get the money back?

A. No, sir.

Q. How much did you pay?

A. I don't know; I paid for the carriage.

Q. You never got it back?

A. No; never a cent.

Q. Is that all the land they appraised that day?

A. Oh, no; they appraised everything. I was with them when they appraised everything that was covered by the mortgage.

Q. Did they appraise Mrs. Diversey's land?

A. I don't know; we were not out there that day. We were at our property that was in the mortgage.

Q. Did you have any conversation with them before you went out to appraise the land that day?

A. No.

Q. Did you know how much —appraised it at—the whole tract?

A. I don't know; Mr. Rees put the paper in there, he said.

Q. Do you recollect how much it all amounted to?

A. I don't know; I never asked about that.

MAY 5TH.

90 Cross-examination of JULIUS KIRCHOFF continued:

Q. There was a piece of 135 acres included in the trust deed?

A. I think so.

Q. To whom did that belong?

A. Mrs. Diversey.

Q. There were lots 4, 5, 6, 7, 8, and 9, in block 4, in Kenogy's subdivision. To whom did they belong?

A. To me.

Q. Do you know what they were valued at?

A. I don't know exactly.

Q. Are they improved lots?

A. No, sir.

Above questions objected to on the ground that they seek to show the contents of the trust deed and therefore not the best evidence.

Q. What were those lots worth in 1878—lots 4, 5, 6, 7, 8, and 9, that we described?

A. I don't know exactly.

Q. Those were not very valuable lots, were they?

A. Yes; they were worth a good deal of money.

Q. They had no improvements on them?

A. No, sir; only full of trees.

Q. There were also twenty-six and 50, in Sheffield's division. What were those worth?

91 A. I don't remember where Sheffield's division is.

Q. And you don't know what the value of those lots is?

A. No, sir.

Q. Do you recollect the date of the Rees appraisement?

A. I do not.

Q. Do you remember what year it was?

A. 1879.

Q. Wasn't it 1878?

A. It was 1879; it may have been after November, 1878; it was in the spring of 1879, I think.

Q. You took Mr. Rees, Mr. Warfield, and Mr. Kendall out only once?

A. Yes.

Q. You were not with them twice when they appraised?

A. I don't remember that very well; I don't remember but one time with Rees, I mean.

Q. Do you remember how much the other land was appraised by Rees at the time he appraised your homestead lots?

A. I think the 3⅓ acres he appraised at $9,000, the other piece at $15,000, and a lot on Rose street, $1,000, and a lot on Chicago avenue, I think, $3,000—$2,000 or $3,000; I don't remember exactly.

Q. Not knowing the value of your lands at that time, you couldn't tell me what they were all worth?

A. Do you mean what the lots altogether were worth—the whole amount?

92 Q. Yes.

A. No, sir; I couldn't tell that.

Q. Do you know that Rees' appraisement in 1878 put them, without the farm, at about $40,000?

A. I don't know what he appraised them at that time.

Q. Did you know what the debt was at that time?

A. I didn't know exactly.

Q. When you gave that quitclaim deed to the company you didn't intend that any further debt should hang over you?

A. It was that no debt should be against me except what we gave the mortgage for; we gave the quitclaim deed on that agreement that no debts be against me from the company except the mortgage we gave on our homestead.

Q. Then it was understood at the time you gave the quitclaim deed, if I gather it right, that that debt against you should all be satisfied—you should give the quitclaim deed in satisfaction of that, and then that you should execute the mortgage on your homestead for $10,000 and they give it to you back?

A. I should give the quitclaim deed and they give me back the homestead.

Q. And also to satisfy the debt?

A. Yes.

Q. And was it to be considered satisfied?

A. Yes; except the homestead, what we owed the company on the homestead, $10,000.

93 Q. And it was put in the quitclaim deed that it was given in satisfaction of the indebtedness of Julius Kirchoff and Elizabeth Kirchoff on their trust deed against you?

Objected to as tending to show the contents of a written instrument.

A. I don't know anything about what was put in the quitclaim deed. Our agreement was we should give the quitclaim deed and get the homestead back at whatever it was appraised for.

Q. And that the debt should be satisfied?

A. Yes. It was to be nothing any more. That settled everything.

Q. If they hadn't agreed to satisfy the entire indebtedness you would not have given that quitclaim deed?

A. Well, we had been speaking so long about this agreement about the homestead that we came to that agreement that whatever the property would be appraised to take as the homestead and then be quit of the debt against us except the $10,000.

Q. They were to give you back the homestead, you say, and also to cancel all their indebtedness against you; and if they had not agreed to cancel their indebtedness against you you wouldn't have given this quitclaim deed, would you?

A. I don't know.

Q. You wouldn't have given the quitclaim deed if they had held the debt over you?

A. Our agreement was that it should be cancelled and we get the homestead back.

94 Q. If they had not agreed to cancel the debt you wouldn't have given the quitclaim deed?

A. Well, we had been talking so long about it—to give the quitclaim deed—I don't know whether we would have given it.

Q. Would you have given the quitclaim deed if they had held a judgment over you for the balance over and above what the property would sell for?

Objected to as being in effect the same question which has been propounded to the witness several times and fully answered.

A. Our agreement was that this appraisement by Mr. Rees would settle the whole thing, give the quitclaim deed, and no debt would be hanging above us.

Q. There were two things you wanted done. You wanted to get the debt cancelled so that it wouldn't hang over you, and you also wanted to get your homestead back.

A. That was the reason we gave the quitclaim deed. That was our agreement.

Q. You wanted both those things?

A. It was settled that way.

Q. And that was the reason you gave the quitclaim deed?

A. Yes, sir.

Q. To get both of those things done?

A. Yes, sir.

Q. It wouldn't have done you any good to get your homestead back unless you had your debt cancelled?

Objected to as argumentative and calling for conclusion and not facts.

95 A. That was our agreement I made with Mr. Warfield.

Q. To have both done—to have your homestead back and your debt cancelled?

A. Yes, sir.

Q. You didn't know what the land was worth and you didn't know what the debt amounted to and you were desirous of having the land pay the debt, weren't you?

A. Our agreement was whatever the property would be appraised for.

Q. Should be taken in full satisfaction of the debt?

A. The main thing when we had the property appraised was whatever the homestead was worth and to make the settlement with them to give the quitclaim deed and take the homestead back.

Q. And, whatever the property was worth, turn it over for the whole debt?

A. They made some arrangement about Mrs. Diversey's, but don't know what that was. She gave in some property, too.

Q. She gave a quitclaim deed, too?

A. I don't remember very well.

Q. None of these agreements that you speak of were put in writing?

A. No, sir.

Q. They were all merely verbal?

A. The same as I have always done with the company since 1871, when we took the money; did everything in the same way. I never put anything down because I expected we would never 96 have any trouble with the company, and so we made the agreement with the officers in their office here.

Redirect examination.

By Mr. Harbert:

Q. What is your nationality, Mr. Kirchoff?

A. German.

Q. Have you or not had some difficulty in understanding some of the questions which have been put to you?

A. I didn't understand some of them very correctly because I never went to school here to study the English language.

Q. When did you first begin talking with Mr. Warfield about this arrangement?

A. It was before they filed the bill—before the 11th of July, 1878.

Q. How long before you came to an agreement about it after you commenced talking about it?

Objected to as not being in rebuttal.

A. It was during 1878 and 1879 when we came to the agreement.

Q. Did you or not agree almost at once as to what you would do about the matter?

Objected to as leading and not in rebuttal.

A. Oh, yes.

Q. When you refer to a final agreement about the matter what do you mean?

97 A. I mean that we made our agreement for the homestead and should give a quitclaim deed and have the homestead back at whatever it would be appraised for.

Q. Was your agreement that you should have the homestead back for what it would be appraised at made before or after the appraisal?

A. After the appraisal; whatever the appraisal would be the price. Our agreement was made before that whatever we should pay that should be what the appraisal was.

Q. Then do you mean that you had no understanding with the company about the matter till after the appraisal?

A. No; before. We had an understanding from 1878, when they filed the first bill. We had spoken about the quitclaim deed, and then we made the agreement that whatever the price should be of the homestead that should be the appraisal. The bargain was made at ten years, only the price was set; that was the appraisal.

Q. The price was fixed by the appraisal?

A. Yes, sir.

Q. When did you make your first agreement?

A. In 1878, before they filed the first bill.

Q. How many times did you talk that agreement over with Mr. Warfield?

A. Oh, very often we spoke about it, but I don't know exactly how often.

98 Q. Was the agreement fully understood during all these conversations?

Objected to as incompetent and as having been gone over in chief.

A. Yes, sir.

Q. You say the agreement was made and fully understood before the appraisement?

Objected to.

A. Yes, sir.

Q. What are we to understand you as meaning when you say the final agreement was made after the appraisement?

Objected to as not properly in rebuttal.

A. We often spoke about the agreement that they wanted to get the quitclaim deed of us, and we made an agreement to get our homestead back, and that they would have it appraised some time and I should go along, and whatever the price would be we would take at ten years' time, $1,000 a year.

Q. Then you mean, do you, that before the appraisement it was impossible for you to tell how much you would have to pay in dollars and cents for the homestead?

Objected to as leading and not properly in rebuttal.

A. We couldn't know it except as they appraised the property; whatever they appraised it.

Q. Was the contract in any way modified or changed after the appraisal?

A. It was all the same. We understood it all the time the same.

99 Q. And after the appraisal and by the appraisement it was determined how much you were to give for the homestead?

A. Yes, sir.

Q. Please look at the paper which I now show you and state whether or not it is the appraisement which you have testified about, if you know.

(Hands paper to witness, being a paper produced under notice by defendant's counsel.)

A. I never saw this one; I don't — anything about it.

Q. Please examine the instrument now shown you and state whether or not the same was signed by you and your wife.

(Hands same to witness.)

A. Yes, sir; that is my handwriting and that is my wife's writing (indicating).

Q. Is that the quitclaim deed to the company that you have testified about?

A. Yes, sir.

(Plaintiff introduces a copy of said deed by consent of defendant's counsel; also a copy of the endorsements thereon, which copies it is agreed shall have like force and effect as evidence that the originals thereof would have had, defendant reserving the right to object thereto for incompetency, marked Exhibit "B.")

Q. Who attended to Mrs. Diversey's business for her?

A. Adam J. Weckler, my brother-in-law.

Q. Did you ever attend to any business for Mrs. Diversey
100 relating to this property?

A. No, sir.

Q. Did you during the foreclosure of the trust deed to Boone ever examine the bill which was drawn in that case?

A. No.

Q. Who prepared the quitclaim deed which you have referred to?

A. It was brought in by Mr. Warfield, I think, from their office.

Q. Do you know whether it was read over to you or whether you read it?

A. I don't remember very well.

Q. Do you remember where Mr. Rubens acknowledged it?

A. I don't remember; I think it was in our house.

Q. What is your impression with regard to whether the deed was made before the appraisement or the appraisement before the deed?

A. The appraisement was first.

Q. Then when you made your quitclaim deed you knew exactly how much you were to pay for your homestead?

A. Yes, sir.

Q. After the appraisement and after you made your quitclaim deed to the company what, if anything, did Mr. Warfield tell you about having sent on a deed for the company to make back to you?

Objected to as incompetent.

A. He said he was going to send the papers to the main
101 office and have them sent back, and that it would be ten years' payment at $1,000 a year.

Q. In answer to a question on cross-examination, "When did you make the agreement?" you answer, "It was in 1879." Then follows the question, "What time in 1879?" and you answer, "I don't know exactly; can't remember; either 1878 or 1879." What do you understand by the word agreement in that question?

A. Our contract about the homestead. I mean the bargain we made for the homestead. Whatever the appraisal would be we get it back. We often talked about the bargain in 1879, and after the appraisal we finished the bargain at what the appraisal was.

Q. What do you mean by finished the bargain?

A. Made the agreement to get our deeds from the company.

Q. Do you mean that you finished it by determining how much you would have to pay?

A. That is what we made it—ten years' payment.

Q. Before that you had an agreement to take it at what the appraisal would be?

A. At whatever the appraisal would be, and then we made up the time at $1,000 a year.

Q. And after the appraisement you learned how much it would be?

A. Yes.

Q. And the learning how much it would be finished the bargain?

A. That is what I mean.

Q. When did the company go back on its agreement?

102 A. After we made the agreement I saw Mr. Warfield, and he said that they would send the papers up to the main office, and on their return we get our deed and give them the mortgage; but he said there were some judgments on the land, and for me to see Mr. Kendall and he would know some more about it. I went up to Mr. Kendall in their office and asked him how it was that we had heard nothing about the papers from the main office, and he said they had found about some judgments on the property, and it would have to be settled and closed, and it would be better for us on account of the papers.

Q. By us whom do you mean?

A. Me—the judgment had to be settled up first.

Q. Do you mean judgments against you or against your wife or both?

A. Against both, I think.

Q. What next happened after your talk with Mr. Kendall?

A. He said they had got to clear them all up and look them all over, and that took considerable time.

Objected to as being a repetition of the examination-in-chief. It is agreed that this objection may extend to all former questions on redirect.

A. He told me they had to foreclose to make the property in better shape.

Q. Did he or not still express himself as intending substantially to comply with the contract?

Objected to as incompetent.

103 A. He said yes. I told them that I had made the contract and I would stick to it.

Q. What did they say to that?

A. Well, they said that they had made that contract with me and they had to fulfill it, and Mr. Warfield often said that we had made that bargain and it was all right.

Q. When did the company first, to your knowledge, refuse to comply with the contract or do anything inconsistent with it?

A. I don't remember exactly the year or the time.

Q. Was it about the time the company took proceedings to put you out of your house?

A. Yes; they came with a force of men and said they had the power to throw everything out of the house if we didn't go. I told them that I had a right to it with the bargain I had made before.

Objected to as incompetent.

Q. Did you employ an attorney in that proceeding for restitution in the United States court?

A. Yes.

Q. Was that a short time before the filing of the bill in this case?

A. Yes; before we filed the bill in this case.

Q. I believe you testified on direct examination that the company never did tender you a deed of the homestead lot?

A. They never did. I have often asked about it.

104 Q. You had put all your property in the trust deed, had you?

A. I had.

Q. So that a judgment against you would have been of no value to them, would it?

A. I put in everything except a farm which I sold in 1872 and the proceeds of which I paid over to the company, less expenses. In my former examination I forgot for the moment that that hadn't been put in.

Q. Then at the time you made this bargain with the company a judgment against you would have been of no value, would it?

A. Not much. Still I had a business all the time.

Q. Had you much invested in that?

A. Yes, sir.

Q. How much?

A. Over $25,000.

Q. How many judgments did there appear to be against you at that time?

A. I don't remember.

Q. What were they for?

A. They only appeared to be judgments. As a matter of fact they had been disposed of. I think one was on account of a sister-in-law, Mrs. McMann. They never amounted to anything.

Q. Do you — when Mr. Warfield and Mr. Kendall left the employment of the company?

A. No.

105 Q. Did the company have good security for its debt?

A. Yes, sir.

Q. Did Mr. Warfield ever say anything about that?

A. He never spoke much about it. He was satisfied.

May 8, 1883—continued from May 5th.

Julius Kirchoff, the witness, desires to correct his testimony in this: That where he answered the question as to what the other lands were appraised at by Rees at the time the homestead was appraised he thought reference was made to the amount it was sold for on the foreclosure and answered accordingly. See page 36.

Redirect examination by Mr. Harbert continued:

Q. Referring to your financial condition in 1877, '78, and '79, please state whether or not your business was incumbered during that period.

A. In 1877 I gave a mortgage on the business for $6,600 to the Philip Best Brewing Company, and I had some judgments against me. I took that loan for two years in '79. I had, I think, $3,000 more. The first loan was on the bottling department; the last was on the business on Clark street.

106 Q. Had you given out any judgment notes at that time?

A. Well, I had some against me. There were judgment notes besides what I gave mortgages for, and they took notes with them, the same amounts, same dates, on the 31st of January, 1880. I cancelled all this and gave a new mortgage for $16,000, and that covered all my business on Clark street, Monroe, and the bottling.

Q. In estimating what you were worth from 1877 to 1880 in your business did you include any stocks?

A. I had shares in several mining companies; I figured over $20,000; then I had the papers against me.

Q. Then, in making the $20,000, you figured in your mining stock?

A. Yes, sir.

Q. Were you closed up under this last mortgage?

A. Yes; they closed me up on the 7th of May, 1880, and took everything away then.

Q. What did the company or its agents or attorney know, if anything, about your business?

Objected to as incompetent and indefinite.

A. They often talked about it; they knew I had some mortgages on my place—on my business. We spoke sometimes about it—Mr. Warfield and I did.

Q. How long had you lived on the property which you call your homestead?

A. From 1865 or '6 until the fire, and I built it up again with the building which is on there now, and then lived there

107 until put out by the marshal.

Q. When were you put out by the marshal?

A. The first of May, 1882.

Q. How long have you lived in Chicago?

A. 30 years.

Recross-examination.

By Mr. GROSSCUP:

Q. How many judgments were there against you in 1878 and 1879?

A. I don't know how many; there were several.

Q. How long had they stood against you?

A. Oh, for some time; some till I had some time to settle them.

Q. Were they ever discharged—paid off?

A. A good many, yes, sir; not all.

Q. These that were standing against you in 1878 and '79?

A. I think they were paid; some of them.

Q. When?

A. Some I settled in '79 and some I paid in '80.

Q. What did you mean by telling me on cross-examination, then, that there were no judgments against you?

A. Mr. Kendall said they had got to foreclose the property, and there were some judgments against me, but finding out he said there were none; that they were paid up.

Q. You told me the other day that there were no judgments against you?

108 A. Mr. Kendall told me they were all settled up; that they were against my business.

Q. The judgment against your business would be against your land, wouldn't they?

A. Mr. Kendall told me he had to look that up whether they were paid.

Q. In answer to a question of Mr. Harbert's you say they only appeared to be judgments, but as a matter of fact that they had been disposed of; what did you mean by that?

Objected to as not giving the language of the question and answer.

A. I meant that when Kendall told me that the judgments were paid that Mr. Kendall said the judgments were paid—settled up.

Q. Was that before the foreclosure suit was begun, when those judgments were paid?

A. When we made the bargain the agreement was that they would send the papers to the main office. I found out that they wanted to foreclose the property, and I asked them what they were doing that for. Mr. Warfield said this had to be done; that I should go to Mr. Kendall, and I went to him and he said that there were some judgments against the property, and they had better find out whether that was so or not, and it would be better for me and the property, and then he found out that the judgments were, what he thought, all settled.

Q. Did you find that out before the foreclosure?

109 A. I think it was.

Q. And after he found that out he filed his supplemental bill to foreclose?

Objected to.

A. I don't know anything about that.

Q. You say that a deed was made out of the property from the company to you?

A. That was our contract.

Q. You said a deed was made out and sent to the company?

A. The papers should be made out at their office.

Q. Did you see the deed?

A. I don't remember.

Q. All that you remember, then, is the conversation with Mr. Warfield?

A. That I had made that contract with them to have no judgments hang against me, and also to have the homestead, and they told me they had sent the papers away to their main office.

By Mr. HARBERT:

Q. You have just been asked about some conversation with Mr. Kendall occurring before the foreclosure. What do you understand counsel to mean by "foreclosure"?

A. We gave our quitclaim deed, and they appraised the property; that we should have the homestead back and no judgments hanging above us, and I heard that they were going to foreclose the property,
and Mr. Kendall said that there were some judgments against
110 us, and it had to be done, anyhow; it would be better
for our property; give us the deed—and they give us our homestead back.

Q. Was there just before that any talk about stopping the foreclosure and taking the quitclaim deed from you?

A. They filed the bill on the 11th of July, 1878, and we had been talking all the time about this bargain to give them the quitclaim deed.

Q. Was that talk about the judgments before or after July, 1878?

A. After that; after they filed the bill against us.

Q. Then by the foreclosure you meant the going on and getting the decree, didn't you?

A. Yes; that we should have the same contract; that the company would fulfill the same contract with us.

Q. It was necessary for them to perfect the foreclosure?

A. That was what they said about that; it would not have any trouble with us on account of our agreement that we made with the company; it would not affect any contract at all with us.

Q. Then, when you said this conversation about the judgments was before the forclosure did you mean it was before the bill or before the decree and sale?

A. I think it was 1879 we talked about the judgment.

JULIUS KIRCHOFF.

OCTOBER 19TH, 1883—2 p. m.

Parties met by agreement.

111 Present: Mr. Harbert, for complainant; Mr. Grosscup, for defendants.

EDWIN A. WARFIELD, a witness called on behalf of complainant, having been first duly sworn, was examined by Mr. HARBERT, and testified as follows:

Direct examination.

By Mr. HARBERT:

Q. State your name, age, place of business, and occupation.

A. Edwin A. Warfield; I am of lawful age; reside in the village of Hyde Park, Cook county, Illinois; my occupation is that of a real-estate dealer.

Q. Are you acquainted with the parties to this suit, Elizabeth Kirchoff and the Union Mutual Life Insurance Co. of Maine?

A. I am somewhat acquainted with Elizabeth Kirchoff and with the Union Mutual Life Insurance Co. of Maine.

Q. Are you acquainted with Julius Kirchoff, the husband of the complainant?

A. I am.

Q. Were you at one time in the employ of the Union Mutual Life Insurance Co. of Maine; and, if so, when did such employment begin, how long did it continue, and what was the nature of such employment?

Defendant's counsel objects to the witness stating the nature of that employment until it appears that the appointment itself is not in writing.

112 A. I was in the employ of the Union Mutual Life Insurance Co. of Maine. I think the employment began in 1869 or 1870. As to the time that it continued is an unsettled question. The nature of the employment has been that of special agent, superintendent of agencies for the company, and financial agent in Chicago.

The latter part of the answer concerning the nature of the employment objected to.

Q. What was the nature of the business transacted by you on behalf of the company?

A. The nature of the business transacted by me on behalf of the company here in Chicago was that of financial agent in connection with loans and real estate.

Question and answer objected to for the same reason as the foregoing.

Q. How extensive were your duties as financial agent?

Objected to because it does not appear but that his appointment is in writing.

A. My duties here embrace the management of the company's loans and real estate.

Answer objected to for the same reason.

Q. Were you or not the sole financial agent of the company during the period you were acting for them as such in this State?

A. I was.

Q. Did your employment by the company continue till after '71?

113 A. It did.

Q. Do you remember of a loan being made by the company to Elizabeth Kirchoff, in which Mrs. Angelina Diversey was interested, for about the sum of $60,000, about May 8th, 1871?

A. I do.

Q. Was there more than one loan of that amount or near that amount?

A. I think that there was but one loan for $60,000.

Q. And no more?

A. There may have been loans previous to the one in '71.

Q. What was this loan which you have referred to in 1871 for about $60,000 secured on?

A. There were several pieces of property given as security for this loan. There was a hundred and twenty acres, more or less, about half way betwe-n the stations of Wilmette and Winnetka, on the Chicago and Northwestern road, about 16 miles north of the city, being a part of the security for this loan. There were several lots in Knokke and Gardiner's subdivision in Lake View; there were one or two lots in Rose's subdivision in Chicago and two lots near the corner of Rush and Pierson streets, in this city. There was a lot on Chicago avenue, near Rush street. I don't call to mind any other property just now.

Question and answer objected to as not being the best evidence on the subject.

114 Q. There was a lot on the corner of Rush and Pierson streets, was there not, and also another lot adjoining the same, these two lots being called by Mr. and Mrs. Kirchoff their homestead?

A. There was a lot on the southeast corner of Rush and Pierson streets, and there was also a lot cornering on this one which has a frontage on Pine street, in the same block. The corner lot was occupied as the homestead of the Kirchoffs.

Q. The smaller lot was nearly in the rear of the other?

A. I think it corners on the other.

Q. Was this loan ever paid in cash by the Kirchoffs?

A. No, sir.

Q. Do you remember when they began to make default in interest or taxes?

A. I don't remember exactly; it was prior to September, 1876.

Q. Who represented Mrs. Kirchoff in the matter of the negotiation for and subsequent attention to this loan, if any one?

A. Her husband, Julius Kirchoff, so far as I had any connection with the matter.

Q. After defaults began to be made in the payment of interest, did you have any interview with Mr. or Mrs. Kirchoff in relation to the same?

A. I did with Mr. Kirchoff.

Q. How frequent were such interviews and when did they begin?

A. They began in the fall of '76 or early in the year 1877. There were times that I saw him frequently; sometimes perhaps a week or two, more or less, may have elapsed between our interviews. 115

Q. Who was the local attorney here of the company at that time?

A. Robert B. Kendall.

Q. Did he continue in the employ of the company till after '81?

A. It is my impression that he did. I cannot state when his connection with the company terminated.

Q. Please state the circumstances under which these interviews to which you have referred occurred, the causes which led to them, and give me in as nearly a chronological order as you can what occurred in each of these interviews—what was done and what was said.

Objected to because it does not appear that Mr. Warfield had any authority to act for the company in those transactions.

A. The circumstances, as I remember them, were that there had been a default in the payment of the interest and taxes on the Kirchoff loan, and the interviews were in regard to the possibilities or the probabilities of their paying the interest or taxes or some portion of them. We had interviews in regard to funding the entire indebtedness into a new loan to draw four or five per cent. interest. Mr. De Witt, the president of the insurance Co., was present at one of these interviews and proposed to fund the entire indebtedness to the company into a new loan, provided they would pay their interest on the new loan at the reduced rate, and 116 there was an interview, at which a proposition was made for the Kirchoffs to make and deliver a quitclaim deed to the Union Mutual Life Insurance Co. covering all the property embraced in the trust deed given to secure the loan, and that the insurance Co. would sell and reconvey to the Kirchoffs their homestead, which was the lot on the southeast corner of Rush and Pierson streets, and the proposition, I believe, embraced the lot which corners on the homestead and fronts on Pine street. This conveyance was to be made by the insurance Co. at the appraised value of the property, to be made by James H. Rees. The appraisement was made by Mr. Rees, which was to be the price that the Kirchoffs were to pay for the property. The terms, as I remember them now, were $1,000 cash on the delivery of a deed from the company and $1,000 a year until the property was paid for, together with interest at six per cent. on the deferred payments. Subsequently Mr. Kirchoff came with a carriage and took Mr. Rees, Mr. Kendall, and myself to look at the property for the purpose of making the valuation. As near as I remember, the homestead was valued at $7,500 and the lot fronting east on Pine street was valued at $2,500, making $10,000, which the Kirchoffs were to pay for the property, in instalments of $1,000 a year until paid, together with interest at the rate of six per cent., and this was to be the price for which the insurance Co. would reconvey the property to the Kirchoffs on the terms which I have stated.

117 Objected to as being irrelevant and incompetent and for the reason that it does not appear that he had any authority to make these arrangements.

Q. $1,000 on the delivery of the deed from the company?

A. My understanding was that the $1,000 was to be paid on the delivery of the deed from the insurance company to Kirchoff, and then I should say $500 every six months thereafter of the principal sum, together with the interest at six per cent.

Q. Did Kirchoff make a quitclaim deed of all the property? And, if so, state what next occurred.

Objected to as calling for parole evidence of a written instrument.

A. Yes; he made a quitclaim deed of all the property embraced in the trust deed given to secure the loan to the insurance company, and the understanding was that the quitclaim deed would do away with the foreclosure proceedings—that is, Mr. Kendall would dismiss the proceedings if any had been commenced to foreclose the loan, but after the Kirchoff's deed had been delivered and recorded Mr. Kendall found that there were certain objections to the title to the property which could be perfected by a foreclosure, and I notified Mr. Kirchoff that the proceedings would go in order to perfect the title to the property. I don't remember what Mr. Kendall's objections to the title were.

Answer objected to as incompetent and as not being the best evidence on the subject on which it treats.

118 Q. After it had been discovered that to perfect the title it was necessary to foreclose, what was the understanding then with Mr. Kirchoff, if the former understanding was in any way modified?

Objected to.

A. I stated to Mr. Kirchoff that the proceedings to foreclose would go on, and I referred him to Mr. Kendall for the particulars.

Q. What, if anything, was said by you at the time when you told him the proceedings would have to go on, with reference to the effect, if any, of such proceedings upon the agreement he had made with you about his receiving back his homestead property?

Objected to for reasons before assigned.

A. As I remember it now, I told Mr. Kirchoff that we would have the deed from the insurance Co., if executed, and the mortgage back to the insurance Co. signed by him, and that the payments could be made to the company, and it is my impression the deed was prepared by Mr. Kendall and sent to the insurance Co. for execution.

Q. You say that Mr. Kirchoff was to receive his deed at that time. Do you mean that he was to receive his deed at the time when the title should be perfected in the company by the foreclosure?

119 A. In my negotiations I did not think it necessary to wait until the title was perfected in the insurance Co. by a foreclosure; I thought that he could take the deed from insurance Co. and give the mortgage back to the company.

Question and answer objected to.

Q. You say the deed was made out by Mr. Kendall and sent to the company, the deed from the company to the complainant?

A. Yes, sir.

Q. Was such deed ever returned, to your knowledge, or tendered to Mr. or Mrs. Kirchoff?

A. It was not, to my knowledge.

Q. Was there more than one quitclaim deed made by Kirchoff to the company?

A. I think there was only one quitclaim deed made by the Kirchoffs to the insurance Co.?

Q. Do you remember a conversation between yourself and Mr. Kirchoff after the foreclosure was begun in which something was said about the foreclosure, but that it was all the same thing so far as he was concerned, or something to that effect?

Objected to as incompetent, leading, and for the reasons stated in the foregoing objections.

A. That was the conversation substantially at the time above referred to, in which I asked him to see Mr. Kendall for particulars.

Q. Please state that conversation as nearly as you can—what Mr. Kirchoff said to you and what you said to him.

Objected to.

120 A. As near as I remember it now, I told Mr. Kirchoff that Mr. Kendall said the title was not satisfactory to him under that quitclaim deed, and that he would go on with the foreclosure proceedings; and I asked Mr. Kirchoff to go and see Mr. Kendall, as he could give him more particulars about it than I could, but I did not understand that it made any difference in the negotiations which were pending between us at that time.

Q. Please state whether or not the arrangements and agreements between the company and Mr. and Mrs. Kirchoff had at that time been concluded.

Objected to.

A. The negotiations spread over a considerable time, and I cannot state definitely, but to the best of my recollection the agreement for his quitclaim deed and the reconveyance of the homestead property back to the Kirchoffs had substantially been made at that time.

Adjourned to Oct. 23rd at 2 p. m.

KIRCHOFF
v.
U. M. LIFE INS. CO.

JUNE 7TH, 1884.

Parties met pursuant to notice, and adjourned without taking testimony to June 9th, 1884, at 2 o'clock p. m.

JUNE 9TH, 1884—2 o'clock p. m.

121 Parties met pursuant to adjournment. Mr. Herbert appeared on behalf of plaintiff and Mr. Grosscup on behalf of defendants.

Examination of Edwin A. Warfield (continued):

Mr. Herbert:

Q. Mr. Warfield, in your previous testimony you have narrated certain negotiations and transactions between yourself on behalf of the Union Mutual Life Insurance Company on the one part and Mrs. Kirchoff, the complainant, on the other part. Please state whether or not you had authority from the defendant company to do and say what you did in that behalf.

Objected to by defendant's counsel unless it appears that the authority was not in writing.

A. I believe that I had authority to do all that I did do in the matter.

Q. Was this or not true with respect to conversations and declarations as well as acts done by you?

A. Yes, sir.

Q. From whom and in what manner was such authority derived?

A. From the officers of the Union Mutual Life Insurance Company of Maine either by letter or verbal instructions when the officers of the company were here in Chicago.

Q. To what officers do you refer?

A. The president, vice-president, or chairman of the finance committee of the company.

122 Cross-examination by Mr. Grosscup:

Q. When did your connection with the company begin?

A. I believe that I have stated that it commenced either in 1869 or 1870; I do not remember exactly the date.

Q. When did it terminate?

A. I have stated that that was an unsettled question.

Q. When did you cease to act as its agent?

A. That is an unsettled question.

Q. Is there no time that you can fix when you ceased to act as its agent?

A. I have fixed no time.

Q. You are not its agent now, are you?

A. No, sir.

Q. How long since is it that you have not been its agent?

A. I cannot state that exactly.

Q. Are you unable to state by reason of the inaccuracy of your memory or for any other reason?

A. For other reasons than from inaccuracy of my memory.

Q. Will you state what the nature of those reasons is?

A. No, sir.

Q. Can you state?

A. Yes, sir.

Q. Generally, was it due to a misunderstanding between you and the company?

A. Probably it was.

123 Q. Friendly relations did not exist between you and the company, then, when you ceased to act as its agent?

A. I cannot answer for the company.

Q. Can you for your own part?

A. Yes, sir.

Q. How was it as to yourself?

A. There were some matters that I did not exactly approve of.

Q. And your agency was terminated by reason of this disagreement between you and the company?

A. I do not so understand it.

Q. Was it not terminated because there was a disagreement between you and the company concerning certain matters?

A. I think there was an attempt made to terminate the agreement on account of such——

Q. An attempt made by which side?

A. The insurance company.

Q. Which attempt brought about unfriendly relations, did it not?

A. I cannot state for the insurance company whether their relations were friendly or unfriendly.

Q. Do you know where this complainant is now employed?

A. I was not aware that the complainant in this case was employed anywhere.

Q. Has he ever had any business relations with you?

Mr. HERBERT: The complainant is a woman.

124 Mr. GROSSCUP: I mean Mr. Kirchoff, the husband.

A. Mr. Julius Kirchoff, the husband of the complainant, has business relations with me at the present time.

Q. What is his business connection with you?

A. Whenever he sells a lot that I have charge of or represent I pay him a commission for so doing.

Q. He is in your employ for that purpose, then, is he?

A. No, sir; only as a broker. I pay him a commission the same as I would any other man in case he brought me a customer for a piece of property.

Q. Your appointment was in writing, was it not?

A. Yes, sir.

Q. That writing set out the nature of your appointment, did it not?

Objected to as incompetent.

A. Yes, sir.

Q. Have you a copy of that writing in your possession?

A. I believe that I have.

Q. Where is it—at your office?

A. Yes, sir; I think it is.

Q. Under that appointment you corresponded with the company concerning what you did and what you were instructed to do as their agent here, did you not?

A. Yes, sir.

Q. What office did Mr. Kendall hold in the company?

A. Mr. R. B. Kendall was the attorney for the company here in Chicago.

125 Q. Did you report to the company everything that you did in this transaction between Mr. Kirchoff and the company?

A. I do not know that I did, but I presume I did.

Q. Was it not your habit to report everything that you did to the company?

A. It was my custom to report everything.

Q. Was it not required of you?

A. No; not absolutely.

Q. Upon reporting to the company what you did and upon receiving their instructions, did you always follow their instructions?

A. Yes, sir.

Q. Did you in this case always follow their instructions?

A. I believe that I did.

Q. Did you make any agreement with Mr. and Mrs. Kirchoff or anybody acting for them that was contrary to the instructions you received from the company?

A. No, sir; I do not believe that I did.

Q. Did you make any agreements with them in this transaction that were not first reported to the company?

A. No, sir; I do not think that I did.

Q. Your correspondence, then, with the company and their correspondence with you would be a correct record of the transactions that you had with Mr. Kirchoff?

A. My correspondence with the company and their correspondence with me would be a correct record of my transactions with Mr. and Mrs. Kirchoff so far as anything in the matter was done by correspondence.

126 Q. You did not in your correspondence with the company mislead them as to what you were doing?

A. No, sir.

Q. Or attempt to mislead them as to what you were doing?

A. No, sir.

Q. If you stated to them in your correspondence that these nogotiations were merely pending negotiations and were not consummated agreements, that was the real state of affairs at the time of such correspondence?

Objected to as attempting to obtain from the witness a legal conclusion and is incompetent.

A. Whatever I stated to them in my letters to the company were the facts in the case at the time such statements were made.

Q. Did you have interviews with Mr. Kendall during the time that the Kirchoff foreclosure was going on?

A. I did.

Q. Did you report to Mr. Kendall and did he report to you what was being done by each of you respectively with Mr. Kirchoff?

A. No; I do not think that we did, except in a general way.

Q. You acted jointly in the matter, however, did you not?

A. Yes, sir; in so far as we acted together.

Q. You did not attempt to mislead Mr. Kendall?

A. No, sir.

Q. Nor to conceal from him what you were engaged in?

A. No, sir.

127 Q. But whatever you stated to Mr. Kendall that you were engaged in was the truth at the time?

A. Whatever I stated to Mr. Kendall, either by letter or word, were the facts at the time those statements were made so far as my connection with the matter was concerned.

Q. You do not seem in your examination-in-chief to remember dates accurately. Is that by reason of the fact that those dates are so far removed from this time?

Objected to as assuming as a fact that which is unproven, and because it does not call to the attention of the witness the testimony referred to.

A. It is by reason of the fact that I have forgotten the exact dates.

Q. How many more loans did the insurance company have in the city of Chicago, approximately?

A. Several hundred, I should say, more or less.

Q. And that was with several hundred different people?

A. There were instances where two or three loans were made through the same parties, but these several hundred loans, more or less, represented a large number of people.

Q. Which brought you at that time into connection with a great many people concerning a great many loans?

A. Yes, sir.

Q. There was more than one proposition made by Kirchoff, was there not, as to what he would do in settlement of the loan that the insurance company had on his wife's property?

128 A. To the best of my recollection, there was more than one proposition on both sides.

Q. Were there any propositions made by Kirchoff to the company through you?

A. I believe that my letters or correspondence with the company state that certain propositions were made by the Kirchoffs to the insurance company concerning the loan.

Q. Can you tell from memory what in detail these propositions were?

A. I have stated in a general way as to the one of these propositions, I believe.

Q. I should like to know whether you can from memory tell what each one of these several propositions was.

A. There was one proposition made by the president of the insurance company at one time when he was here in Chicago to fund the entire indebtedness of the Kirchoffs to the insurance company into a new loan, and the insurance company were to take the same property as security for the new loan at a reduced rate of interest, I believe four per cent., and another proposition.

Q. Was this proposition which you have last named carried out?

A. No, sir.

Q. Why not?

A. It was declined by the Kirchoffs.

Q. You may state any other propositions you remember now.

129 A. At another time, subsequent to the proposition I have referred to, a proposition was made to the Kirchoffs to sell them the property which they called their homestead at the valuation to be placed by James H. Reese, and the payments were to be one-tenth of the amount down and one-tenth a year until paid, with interest at the rate of six per cent.

Q. To whom was that proposition made?

A. Julius Kirchoff, by the insurance company.

Q. Through whom?

A. I cannot state whether it was the president or vice-president or Mr. Seccomb, who, I believe, was chairman of the finance committee; it was by some one of these gentlemen when here in Chicago.

Q. Were you present?

A. Yes, sir.

Q. Where were you when it was made?

A. Probably in the office of the company.

Q. Don't you recollect where you were?

A. I should say in the office of the company.

Q. Do you recollect that you were there?

A. Only that most of such propositions were made there; I should presume that this was made there also.

Q. You have no distinct recollection, then, of being in the office when that proposition was made?

A. I don't remember distinctly as to that matter.

130 Q. Do you recollect what the language of the proposition was?

A. As near as I can state it, that the insurance company would allow Mr. Kirchoff to retain his property that he called his homestead at the valuation of the property to be fixed by James H. Rees.

Q. Do you recollect the date?

A. No, sir.

Q. Do you recollect the year?

A. I think it was in '78; I am not positive.

Q. What time in the year?

A. I don't remember.

Q. Was it in the summer or winter?

An. I don't remember.

Q. And do you not know which of the three persons you have named it was that made it?

A. No, sir; there was so much business of that kind; and as one of the three gentlemen was here nearly all the time, I could not state which one.

Q. They were not all here at once?

A. Frequently they were here all together, but some one of them was here nearly all the time.

Q. Do you know who else was present when this proposition was made?

A. I cannot state.

Q. What did Kirchoff say?

A. He said he would do it.

131 Q. What was he to do?

A. He was to give a quitclaim deed and was to pay a tenth of the appraised value of the property and a tenth every year until paid for; six per cent. interest.

Q. Did that include any other property?

A. As I recollect it, he had the option to take the lot upon which his house stood at the corner of Rush and Pearson street, and the lot cornering on it, fronting on Pine street.

Q. Was this talk with reference to any other lot except what you call the homestead property?

A. It was in reference to these two pieces of property; he had the option to take either one or both.

Q. Was this talk in reference to any property except these two pieces of property—was there any proposition made at the same time concerning other pieces of property?

A. I don't remember any proposition except as I have stated.

Q. You have not mentioned any other proposition at this same time?

A. These negotiations covered so much time that it is impossible for one to state exactly what other propositions, if any, were made at the time of the proposition for selling the homestead.

Q. There were a great many pieces of property covered by negotiations between the company and Mr. Kirchoff at that time, were there not?

132 A. There was quite a good number of pieces of property covered by the trust deed from Kirchoff to the company, and, as I understand the negotiations, all of the property embraced in the trust deed, including these two pieces, were to be quitclaimed to the company on consideration of his being allowed to retain the homestead at the price and on the terms which I have stated.

Q. The proposition was, then, that he should quitclaim on his part not only these two lots, but all of the property covered by the trust deed?

A. It was stated that if the Kirchoffs would quitclaim all of the property in the trust deed the insurance company would sell and reconvey to them the homestead property at the price to be fixed by Mr. Rees on the terms already stated, and it was understood at that time by myself and Mr. Kendall, the attorney of the company, that such quitclaim would perfect the title in the insurance company. After the quitclaim deed was given and recorded Mr. Kendall discovered that it would be necessary to go on with the foreclosure in order to perfect the title, which he did.

Continued to June 10th, 1884, at 2 o'clock p. m.

JUNE 10TH, 1884—2 o'clock p. m.

Parties met pursuant to adjournment; same parties present.

133 Cross-examination of EDWIN A. WARFIELD continued by Mr. GROSSCUP:

Q. You have stated that you heard a conversation between some officer of the company and Mr. Kirchoff, in which a proposition was made. Can you state any other time or place when you heard any conversation between any officer of the company and Mr. Kirchoff concerning the homestead property?

A. I do not remember the exact dates, times, or places, but, to the best of my recollection, the conversation between Kirchoff and any one of the officers of the insurance company were in my office, on La Salle St.

Q. Do you recollect more than one occasion when there was a conversation there?

A. Mr. Kirchoff visited the office sometimes two or three times in a week, and during these negotiations he may have been in the office anywhere from twenty to fifty times, more or less, I couldn't state, and at some of these interviews he met some of the officers of the company, at which times there was more or less conversation about these matters. I believe that there are letters written by me to Kirchoff in which he was invited to come to the office and meet certain officers of the company concerning the loan, but as to the exact dates, times, and places I am unable to state.

Q. Can you recollect any other occasion than the one you have named in which this agreement you have mentioned, viz., that Kirchoff should have the right to redeem the homestead 134 property upon the payment of whatever the lots should be appraised at, was made?

A. I have stated that a proposition was made to fund the entire indebtedness of the Kirchoffs to the company and to take the same property as security for the loan on a basis of four per cent. interest and small payments on account of the principal spread over ten or twenty years; that was one of the propositions. I have already stated that another proposition was that the insurance company would sell the homestead property to the Kirchoffs at the valuation of James H. Rees.

Q. My question, Mr. Warfield, is whether the second proposition was made on more than one occasion, as you now recollect it.

A. I cannot state positively whether it was made on more than one occasion, as I now recollect it.

Q. And on the occasion upon which it was made you have no recollection which officer of the company was present, have you?

A. I am not positive, but I think it was the president of the company.

Q. Mr. De Witt?

A. Mr. De Witt.

Q. You have no recollection of the time when this occurred?

A. I could not state the exact time.

Q. Could you state the time approximately?

A. I think it was during the years '78 or '79.

135 Q. With reference to the quitclaim deed executed by Kirchoff and his wife, what time was it?

A. I think it was in '79——

Q. Was it before or after that quitclaim deed was executed?

A. I should say before.

Q. How long before?

A It may have been a matter of a few months or it may have been a year or more than a year.

Q. It may have been a matter of a few months or a year or more than a year. You cannot state who was present, positively, except yourself and Mr. Kirchoff, can you?

A. Not positively. There was one or more of the officers of the company besides Mr. Kirchoff and myself, but I could not state which one.

Q. Did you ever make any propositions to Mr. Kirchoff, except on this occasion, concerning the privilege of Kirchoff to have a reconveyance of the homestead property?

A. I don't know which one of the propositions you refer to.

Q. I refer to the proposition that Kirchoff was to have a reconveyance of the homestead property from the company upon paying to the company an amount of money equal to the valuation to be made by an appraiser.

A. My negotiations or conversations with Kirchoff about this matter were so many and spread over so much time that it is impossible for me to state anything more than the general substance of the various propositions.

136 Q. Have you any present recollection of any occasion upon which you made the proposition spoken of, that Kirchoff should have a reconveyance of his property upon certain terms, distinct from the occasion when the president of the company was present?

A. I remember a conversation with Kirchoff about this matter that took place in his saloon, at 124 Clark St., on one occasion.

Q. You may state what was said in that conversation in the saloon on Clark street.

A. I believe that at that interview the arrangements were made for going out to appraise this property with Mr. Reese. In pursuance of this arrangement——

Q. In pursuance of the former arrangement?

A. Yes; but, as I have before stated, I am not giving these dates and conversations only to the best of my recollection and belief.

Q. What other occasion do you remember when this proposition was spoken of?

A. I remember conversations in the office, but as to dates I could not state.

Q. Can you give what was said?

A. Only as I have already stated. I have stated the substance of the matter as fully as I am able at present.

137 Q. Can you state the substance of any other conversation

in your office than the one between the officer of the company and Mr. Kirchoff?

A. I do not call to mind any one particular interview, but there was a good many of them.

Q. Covering a great many things?

A. Yes; in connection with this loan.

Q. Look at the letter that I now hand you and state if you received that letter from John A. De Witt. (Hands paper to witness.)

A. Yes, sir; I should say that that letter was received by me from John A. De Witt.

Q. Do you know to what it refers?

A. Yes, sir; I think I do.

Q. Do you know what Mr. De Witt referred to when he said, "We have today written Mr. Kendall that the Kirchoff offer was declined and we will not sell for less than $8,400"? What offer was this that was declined?

Objected to as not proper cross-examination and as being an examination of the witness respecting the contents of a letter which had not been introduced in evidence.

A. I believe that this letter is in answer to a letter from Mr. Kendall to the insurance company, in which he enclosed a deed for one
or both of the Kirchoff property for the company to execute
138 in compliance with the proposition that I have referred to,
and that the offer referred to in this letter by Mr. De Witt is
Mr. Kirchoff's offer to pay the first payment at the expiration of six months instead of on delivery of the deed.

Q. Was not the offer of Mr. Kirchoff to pay $7,000 for the lot?

A. I understood it to be $7,500 for one and $2,500 for the other.

Q. Is not that what Mr. De Witt has declined stating, that he will sell for not less than $8,400?

Objected to for the reason that it calls for a legal opinion and because it is not cross-examination, and, thirdly, because it seeks an interpretation by the witness of a letter neither written by nor to him.

A. I believe that Mr. De Witt declined to accept the first cash payment at the end of six months, as suggested by Mr. Kendall in his letter to him. I do not know now and never did understand why he said, "We will not sell the property for less than $8,400."

Q. Do you recollect of Mr. Kendall writing to the company at the time this deed was enclosed to them?

A. I understood at the time that he did write a letter and enclosed a deed for the company to execute.

Q. Did he consult with you when he wrote the letter?

A. I do not remember that he did; possibly he did, but I do
not recollect it now. I will state that my recollections can
139 be refreshed by an examination of the correspondence.

Adjourned to June 11th, 1884, 2 p. m.

CHICAGO, *June* 11*th*, 1884—2 p. m.

Testimony of E. A. WARFIELD continued.

Cross-examination by Mr. GROSSCUP:

Q. Will you read the letter which is dated November 5th, 1879, and signed J. E. De Witt, and which you say you received from John E. De Witt?

Objection is made by Mr. Harbert on the ground that it is not proper cross-examination, the paper itself not being introduced in evidence.

A.—

153 TREMONT STREET, BOSTON, *November 5th*, 1879.

E. A. Warfield, Esq., 133 La Salle street, Chicago.

DEAR SIR: We have today written to Mr. Kendall that the Kirchoff offer was declined and that we will not sell for less than eighty-four hundred dollars. We want you to take possession of the house as soon as the matter is closed up. Please advise us.

Yours truly, JOHN E. DE WITT, *President*.
C.

The reading of the letter is objected to on the part of the complainant.

140 Counsel for the defendant offer the letter as above read in evidence and mark the same Exhibit A.

Q. Did you receive that letter which I now show you in due course of mail?

A. I believe that I did.

Q. In whose handwriting is the signature attached to it?

Objection by Mr. Harbert on the ground that it is not proper cross-examination.

A. I believe it to be in the handwriting of a Mr. Cross.

Q. Did you understand it as coming from the company?

A. I did.

Q. You may read it.

Reading objected to by Mr. Harbert on the ground that it is not the proper method of showing the contents of a letter.

A.—

153 TREMONT STREET, BOSTON, *October* 16*th*, 1879.

E. A. Warfield, Esq., 133 La Salle street, Chicago.

DEAR SIR: Will you kindly inform us when we may expect to get the Kirchoff loan, 682, in shape for closing it up? We would like this matter wound up at as early a date as possible.

Yours truly, JOHN E. DE WITT, *President*.
C.

141 Counsel for the defendant offer the said letter in evidence and mark the same Exhibit B, defendant.

Objection is made by the complain-t's counsel.

Q. Did you receive the letter which I now hand you in the due course of mail?

A. I believe that I did.

Q. Did that come to you from the company?

A. I should say that it did.

Q. You may read it.

Objection is made by Mr. Harbert.

A.—

153 Tremont Street, Boston, *December 3rd*, 1879.

E. A. Warfield, Esq.

Dear Sir: Your favor of the 26th at hand in reference to loan 682, Kirchoff. If he does not pay his rent you have the usual remedy at hand to put him out, and there is no reason why you should not.

Yours truly, JOHN E. DE WITT, *President*.
W. G. R.

Said letter is also offered in evidence, marked Defendant's Exhibit C.

And objection is made to its introduction by Mr. Harbert as incompetent.

Q. Do you remember Mr. Kendall submitting the terms of an agreement by which Mr. Kirchoff was to repurchase his homestead to the defendant?

142 A. I cannot state whether Mr. Kendall submitted the proposition or not.

Q. Do you not remember that Mr. Kendall submitted the proposition at the same time that he enclosed a blank deed to the defendant for the homestead premises?

A. I understood that in the letter in which he enclosed a deed for the company to execute that he made a suggestion as to the change of the terms of payment to be made by Kirchoff.

Q. Were you present when the letter was written?

A. I do not believe that I ever saw the letter. I may have seen a letter-press copy, but I do not remember it now.

Q. Then you do not know what the contents of the letter were?

A. Only as I have stated, and I am not sure whether I got that from Mr. Kendall or from his letter-press copy.

Q. Was not the deed enclosed at that time to the company made out at seven thousand dollars?

A. I do not remember.

Q. Would you know the deed if you saw it?

A. I think that I would recognize the handwriting.

Q. Did you write that letter which I now show you?

A. I think that letter was written under my direction.

Q. Is that a letter-press copy made by yourself or by some one under your direction?

A. I should say that it is a letter-press copy made out by a party under my direction.

143 Q. Did you send the letter of which that is a letter-press copy to the company?

A. I think that I did.

Q. You may read the letter.

Objection is made to the reading of the letter in evidence by Mr. Harbert on the ground of incompetency; also because it is immaterial, secondary, and not proper cross-examination.

CHICAGO, ILLINOIS, *November* 26, 1879.

I have waited some time in order that I might be able to report the settlement of 682, Kirchoff, but cannot do so yet. I saw Mr. Kirchoff a few days since and had him go with me to Mr. Kendall's office, but found Mr. Kendall absent. Mr. K. agreed to meet me at Mr. Kendall's office the same afternoon at four o'clock, and I have not been able to see him since. He claims that he settled with Mr. Kendall with the understanding that he was to purchase the homestead on the terms submitted some time since by Mr. Kendall, and Mr. Kendall says that such is not the case. I have possession of the house under a lease to Kirchoff, but he does not pay rent worth a cent.

Yours truly, E. A. WARFIELD,
Financial Agent.

G.

Objection is made by the complainant's solicitor to the reading of the said letter on the ground that it is secondary evidence.

144 Q. You may state what loan is meant by 682.

A. The loan from the Union Mutual Life Insurance Company to the Kirchoffs for sixty thousand dollars, referred to in this case.

Q. Do you remember when the bill to foreclose this loan was filed?

A. I do not.

Q. Was it not the succeeding year, in August?

A. I could not state without reference to the papers.

Q. Who lived in the house from the fall of 1879 to the time the bill was filed?

A. I think the house was occupied by the Kirchoffs in 1879.

Q. Did they pay you rent?

A. I collected some rents as receiver appointed by the court.

Q. When they refused to pay you rent what was done?

A. I cannot state without reference to the papers in the case.

Q. Did you not apply to the court for a writ of assistance to put them out of possession?

A. I do not know whether I did or not.

Q. Have you any recollection of their being put out of possession?

A. No, sir; I have not.

Q. Did they remain in possession?

A. Well, I should say, to the best of my recollection, that they were in possession when or up to the time that I resigned my receivership.

145 Q. When did you resign your receivership?

A. I think that that was in September, 1880, but I am not sure as to dates.

Q. Who succeeded you as receiver?

A. I believe James H. Gallery.

Q. Look at that quitclaim deed from Kirchoff and wife to the Union Mutual, which has already been introduced in evidence, and state if it covers all the property that was covered by the trust deed.

A. I think that it does not embrace all the property covered by the deed of trust.

Q. Can you tell what property is not embraced in this quitclaim deed that was covered by the trust deed?

A. I believe that the property called the Diversey farm is not embraced in this quitclaim deed.

Q. Is there any other property besides the property known as the Diversey farm that is not embraced in this quitclaim deed?

A. I cannot state without reference to the trust deed. I understood that the property embraced in the quitclaim deed from the Kirchoffs to the insurance company embraced all the property owned by the Kirchoffs and held as security for the debt at the time the quitclaim deed was made. I also understand that the other property mentioned in the trust deed given to secure 146 the loan which is not embraced in the quitclaim deed had either been released by the trustee from the operation of the trust deed or was owned by Mrs. Angela Diversey.

Q. The notes were originally made by Elizabeth Kirchoff and Julius Kirchoff and the deed of trust to secure the payment of those notes was made by Julius Kirchoff and Elizabeth Kirchoff upon their property, in which Angela Diversy joined upon her property?

A. That is as I understand it.

Q. Now the quitclaim deed omitted to convey to the insurance company the property mortgaged by Angela Diversy to secure these notes?

A. Yes, sir.

Q. Was it not understood and agreed at the time that the insurance company would take this quitclaim deed in full satisfaction of the entire debt and release Angela Diversy from her liability upon the debt?

A. I do not understand it exactly in that way. I do understand, however, that the quitclaim deed from the Kirchoffs was in satisfaction of the indebtedness against them.

Q. Was not the indebtedness against them the entire indebtedness for which the trust deed was given?

A. Yes.

Q. The effect of the quitclaim deed, then, was to discharge Mrs. Diversey's property from any liability to pay this indebtedness, was it not?

A. No, sir; I think not.

147 Q. Well, if not, why not?

A. I think the insurance company paid her or rather gave her some forty acres of land in consideration of her quitclaim deed, and in consideration of the Kirchoffs' quitclaim deed agreed to sell them the homestead, as stated.

Q. Do you say that Mrs. Diversy ever executed a quitclaim deed to the insurance company?

A. I so understand it.

Q. When?

A. I do not remember the dates. I should have to refer to the books or records. I also understand——

Q. Well, I wish you to answer my questions only. At about this time did Mrs. Diversy execute a quitclaim deed?

A. I think it was subsequent.

Q. Subsequent to the date of the Kirchoff quitclaim deed?

A. I believe so.

Q. If Mrs. Diversy never did execute to the insurance company a quitclaim deed, was not the effect, then, of the Kirchoff quitclaim deed to discharge Mrs. Diversy's property from liability upon these notes?

Objected to by Mr. Herbert as calling for a legal conclusion.

A. I think not.

Q. What part have you taken in the suit of Julius Kerchoff against the company to recover the homestead?

A. I have taken part as a witness in the case and Kerchoff has consulted me more or less about the matter.

148 Q. Have you made any offers to compromise the case?

A. No, sir; I have not.

Q. Have you any authority to compromise the case?

A. No, sir; not that I know of; I supposed I had written authority, but am unable to find any.

Q. Have you any interest in this case?

A. Not that I am aware of, except that I expect to be remunerated for my attendance.

Further examination is postponed until June 12th, 1884, at the hour of two o'clock p. m.

Continuation of the examination of E. A. Warfield before Mr. Voss, master in chancery of the circuit court of Cook county, June 13th, 1884, at ten o'clock a. m.

Redirect examination by Mr. Harbert:

Q. Please state in what manner settlement was made with Mrs. Diversy.

A. The settlement was made with Mrs. Diversy by taking a deed from her for a portion of her property which was embraced in the trust deed given to secure the loan, the trustee releasing to her the balance of the property held in said trust deed and the insurance company releasing the judgment they held against her.

Q. Had the company taken judgment on the note or one of the notes secured by the trust deed?

149 A. It is my recollection that the insurance company entered up judgment against her under a judgment note, but I am not positive as to whether it was this way or not.

Q. How much land was released to Mrs. Diversy?

A. I believe there were forty acres.

Q. Do you know where the forty acres are situated?

Objected to by Mr. Grosscup, as the release is the best evidence of such fact or facts.

A. Forty acres, I believe, are situated in the portion of the southwest quarter of section 28, township 42, range 13, Cook county, Illinois.

Q. I am not asking for the legal description, but for the general description.

A. It is a little west of north from the city and about half way between the stations of Wilmette and Winnetka, on the Chicago and Northwestern railway.

Q. Do you know about when this release was made, the release from the company to Mrs. Diversy, with reference to the deed from Kirchoff to the insurance company?

A. I believe that they were made at substantially the same time.

Question and answer objected to by Mr. Grosscup for the reason that it is not the best evidence.

Q. How was it with reference to the deed from Mrs. Diversy to the insurance company?

150 Objected to as calling for parol proof of written instruments.

A. I believe that they bear substantially the same date.

Q. Now, please state whether or not the settlement with Mrs. Kirchoff and the settlement with Mrs. Diversy were or were not part and parcel of one and the same agreement or transaction.

A. They were substantially the same transaction.

Q. Now, please state fully the terms and agreements of the settlements with these parties which were made at that time.

Objected to for the reason that it is repetition and properly being examination-in-chief.

A. The settlement with Mrs. Diversy was by taking her deed covering from 85 to 95 acres of land, more or less, which was held under the trust deed as a part of the security for the Kirchiff loan and by the releasing of the balance of her property in said trust deed to her and the releasing of the judgment held by the insurance company against her. As I have previously stated, the proposed settlement with the Kirchoffs was the sale of the homestead property to them at a price to be fixed by James H. Reese and on terms that I have already stated, the Kirchoffs to execute a quitclaim deed to the insurance company, which was understood at that time would perfect the title to the property in the insurance company—the property held in this Kirchoff loan.

151 Q. Was it not true that by this settlement with Mrs. Diversy and Mrs. Kirchoff the company obtained a correction of an error in the description in one or more of the parcels of property in the trust deed?

A. There was a clerical error in the description of some of the property embraced in said trust deed, and by the deed from Mrs. Diversy to the insurance company a correction was made.

Objected to as being secondary evidence.

Q. To whom, if you know, did Mrs. Diversy deliver her deed?

A. I think it was to Mr. Kendall, the attorney for the company.

Q. To whom, if you know, did Mrs. Kirchoff deliver her deed to the company?

A. I could not state whether it was Mr. Kendall or myself.

Q. Was the deed from Mr. and Mrs. Kirchoff to the company, to your knowledge, ever tendered back to them or either of them?

A. It was not to my knowledge.

Q. Were Mr. or Mrs. Kirchoff ever told, so far as you know, that the company did not intend to comply with its agreements?

A. Not to my knowledge.

Q. Mr. Kirchoff paid, as I understand by your testimony, some money to you as rent for the property—of the homestead property. Please state how that money was to be applied or whether you told him it should be applied in any particular way.

Question objected to.

152 A. When I took the lease to Kirchoff to sign with me as receiver appointed by the court I stated to him——

Q. Please answer that question. State the conversation.

A. That the rents which he paid on the homestead property would reduce his debt the amount of the rent he paid.

Q. How long after the Kirchoff quitclaim deed to the company was it that you or Mr. Kendall discovered that the title was not perfected by the quitclaim deed?

A. It was not until after the quitclaim deed to the insurance company had been recorded and Mr. Kendall procured abstracts of title to the various pieces of property that he discovered that the title was not perfected by the quitclaim deed to the insurance company.

Q. What, if any, conversation thereupon occurred between Mr. or Mrs. Kirchoff and yourself or any other officer of the company in your presence relative to the necessity for foreclosure?

A. After it was discovered that the title was not perfected by the quitclaim deed to the insurance company and Mr. Kendall decided to go on with his bill to foreclose he served a notice to that effect on Kirchoff, and he came to me to inquire what it meant, and I told Mr. Kirchoff that the title was not perfect or satisfactory to Mr. Kendall, and that in order to perfect the title that he would have to go on and make a foreclosure in the courts, and I referred him to

Mr. Kendall and told him that Mr. Kendall could explain the matter to him better than I could.

153 Q. What, if anything, was said at that time in relation to the foreclosure affecting the rights as to the reconveyance of the homestead?

A. I told him that it would not make any difference, but referred him to Mr. Kendall for further particulars.

Q. Why could you not at that time, why could not the company at that time have given him a deed and taken the mortgage back?

Objected to.

A. The reason was that the company did not hold a good title and they could not make a good title to him; neither could he make a good title under his mortgage back to the insurance company.

Q. Did Mr. Rees make an appraisal of other property than the homestead at the time he appraised the two parcels known as the homestead property?

A. I believe that he did.

Q. Did the company offer to sell any of the other property to other parties at any particular sum corresponding with the appraisement?

A. The company offered to sell any property that they held title to at the values of Mr. Rees and Mr. Morey.

Q. Was the arrangement with the Kirchoffs at the time it was made regarded by the company as a considerable concession to them or not?

Objected to as being improper.

154 A. I did not regard it as any concession to the Kirchoffs, for the reason that if the insurance company held the title to the property we would have sold it to anybody else at the same price, on the same terms, at that time.

Q. Was any conveyance ever tendered the Kirchoffs, to your knowledge, and any demand made of them for payment?

A. Not to my knowledge.

Q. How soon after the arrangement with the Kirchoffs for a conveyance to them of the property under the terms you have testified was it before the homestead property began to appreciate in value?

A. I believe it was about six months or a year.

Q. When did the company obtain such title to the property as would have enabled it to have complied with its contract with the Kirchoffs?

Objected to.

A. To the best of my recollection, it was some time during the year 1881.

Q. On the happening of what event?

A. On the execution of the deed from the master in chancery to the insurance company.

Q. You have stated when the negotiations with the Kirchoffs began. Please state when the negotiations with the Diversys—Mrs. Diversy—began; whether at or about the same time or at a different time.

A. I believe it was about the same time.

155 Q. Was the agreement concerning the settlement of the transaction covered by the trust deed fully consummated so far as Mrs. Diversy was concerned?

A. I believe that it was.

Q. Are Mrs. Kirchoff and Mrs. Diversy related; and, if so, in what way?

A. Mrs. Elizabeth Kirchoff is the daughter of Mrs. Angela Diversy.

Q. Then all the property in the trust deed belonged to the mother or the daughter?

A. I believed it belonged to the mother or the daughter or Kirchoff, the husband of the daughter.

Q. How many conversations, if you know, did you have with Mr. or Mrs. Kirchoff regarding this settlement subsequent to the institution of the foreclosure proceedings and prior to the issuance of the master's deed?

A. I could not state the number of interviews. I should say that there were quite a number of them.

Q. Please narrate these conversations if you can; and, if not, please give the substance of them.

A. I am unable to narrate these interviews, except in a general way. There were a good many of them, at various times and places. At one of these interviews there was some talk about the Kirchoffs
selling a portion of this property to the parties who owned
156 the adjoining property—the property adjoining his homestead
property on the east—at such time as he acquired title to the property.

Q. Can you give the conversation more fully?

Question objected to.

A. Well, I should say that I saw the Kirchoffs several times in relation to a sale of the east sixty feet of his homestead lots to Mr. Isham or Mr. Prentiss at their request, and I tried at that time to get from him a fixed price at which he would make a conveyance whenever the title should be perfected.

Q. How was the title to be perfected?

A. It was to be perfected, as I understood, by a foreclosure and a deed from the master to the insurance company.

Q. How was it to be perfected in Mr. and Mrs. Kirchoff by the insurance company?

A. The only way I know of is by a deed from the company to the Kirchoffs.

Q. Please state whether or not in all or most of such conversations the right of the Kirchoffs to a reconveyance of the property on the terms previously arranged for was recognized?

Objected to.

A. I never told him that the negotiations were off. I never heard him say anything, except in the direction of acquiring title to the property.

Q. Were or were not the officers of the insurance company informed of the situation of matters with reference to the Kirchoff transaction?

Objected to as not the best evidence.

157 A. I have already stated that the officers of the insurance company were informed as to my negotiations.

Q. Were the officers of the company or either of them, to your knowledge, present at any of these conversations which you have referred to as occurring between Mr. and Mrs. Kirchoff and yourself subsequent to the foreclosure proceedings?

A. I cannot remember as to the number of interviews between the officers of the company or the Kirchoffs as to whether they were prior or subsequent to the commencement of the foreclosure proceedings.

Q. Reference has been made to an offer from Kirchoff through Kendall to the company, which it is alleged DeWitt declined. What offer was referred to there?

A. As I have already stated, I understand that in the letter from Mr. Kendall inclosing the deed for the insurance company to sign conveying this property to the Kirchoffs he made a suggestion that the Kirchoffs pay the first payment at the expiration of six months. As I understand the phraseology in that letter in which the president says Kirchoff's offer is declined, that he refers to the offer to pay the first payment at the expiration of six months instead of at the beginning of the year.

Q. Was it or was it not contemplated that the transaction would be closed without the foreclosure?

A. I think that it was.

158 Q. Please state whether or not at or during the latter part of the year 1879 the president of the insurance company or some other of the general officers was here.

A. I believe that the president of the company was here during the first week in October or during the first two weeks in the month of October, 1879, and I should say that he was here once between that time and the first of January, 1880.

Q. At such times were or were not the contents of previous correspondence discussed?

A. These matters were pretty generally discussed and gone over during the time the officers of the company were here.

Q. Who prepared the deed to be executed from the company to the Kirchoffs?

A. It was prepared by R. B. Kendall, the attorney for the company.

Q. Who was the vice-president of the company in 1879 & 1880?

A. Mr. Daniel Sharp.

Q. Was he here also in 1879 and 1880?

A. He was at various times.

Q. Did you receive instructions from him—oral instructions from him—at such times in regard to the business of the company?

A. I did.

Q. Did you make any arrangements in regard to loans or settlements of loans, and especially in regard to the transaction 159 in question, which was not communicated to the company either by letter or through its officers orally?

A. I think not.

Q. Your attention was called to a letter in which occurs the following sentence: He (Kirchoff) claims that he settled with Mr. Kendall with the understanding that he was to purchase the homestead on the terms submitted some time since by Mr. Kendall, and Mr. Kendall says that such is not the case. Was there any other difference or question, to your knowledge, between Mr. Kendall and Mr. Kirchoff with reference to the closing the transaction except as to the time of the first payment?

A. I do not call to mind any at this time.

Q. Please state whether that difference was very strongly urged by Mr. Kirchoff.

A. That difference, I think, Mr. Kirchoff understood that he had settled with Mr. Kendall *or* the basis of paying the money at the end of the six months, and Mr. Kendall said that he had not, but that he submitted the suggestions to the company that they accept the money at the end of six months.

Q. Had the value of the property considerably appreciated or not by the time the company obtained the master's deed?

A. It had appreciated.

Adjourned until June 18th, 1884, at two o'clock.

160 JUNE 18TH, 1884.

Further adjourned to 25th instant, at 2 o'clock p. m.

JUNE 25TH, 1884.

Parties met pursuant to adjournment.

Examination of EDWIN A. WARFIELD continued.

Recross-examination by Mr. GROSSCUP:

Q. Mr. Warfield, did you at any time personally, as agent for the Union Mutual Life Insurance Company, make an agreement with either Mr. or Mrs. Kirchoff that the insurance company would convey to them or either of them what is known as the homestead property for the sum of $7,500 and upon the payments of $1,000 each year, secured by mortgage, with interest at six per cent.?

A. Personally as agent of the company I did not. I did, however, submit to the Kirchoffs a proposition from the company in which it was proposed to sell them what was called the homestead property on certain terms and conditions.

Q. What you did, then, in this matter was to submit to the Kirchoffs propositions as propositions coming from the company?

A. Yes, sir.

Q. Did you inform the Kirchoffs, upon the occasion of submitting these propositions, that they were propositions coming from the company?

161 A. I cannot state positively, but my impressions are that I did.

Q. Will you state from what officer of the company this proposition came to you to be submitted to the Kirchoffs?

A. I cannot state positively, but the probabilities are that it came from Mr. De Witt, the president of the company.

Q. Did the proposition come to you orally or in writing?

A. I could not state which. I received propositions both in writing and orally.

Q. Cannot you state how this particular proposition, that the company was to reconvey the homestead property to the Kirchoffs, came to you?

A. I cannot.

Q. Can you state the date at which Mr. De Witt gave you this porposition to submit to the Kirchoffs?

A. I cannot.

Q. Can you state approximately the date?

A. Oh, I should presume it might have been in '78 or in '79.

Q. Cannot you state any more approximately than that?

A. No, sir; I cannot.

Q. After you submitted this proposition to the Kirchoffs on behalf of the company, how long a time intervened before it was accepted by them?

A. In every case when I spoke to him about this proposition he always said he would do it. It was accepted then. Whenever I talked to him about it he said it was all right. He wouldn't do it.

162 Q. Did you communicate the fact to the company that you had made such a proposition to the Kirchoffs, and that it had been accepted by them?

A. Whatever I did in the matter was communicated to the company or its officers.

Q. That does not answer my question, Mr. Warfield. Did you ever communicate to the company that you had submitted a proposition to the Kirchoffs that the company would reconvey to them any portion of these premises upon the terms you have already stated, and that such proposition had been accepted by them?

A. I communicated to the company all that I did in the matter. Just in what way or what I said or what I wrote it is impossible for me to state unless I can see the correspondence, if it was a matter of correspondence, and if it was a matter of personal conversation between myself and the officers of the company I cannot state anything more definitely than what I have stated.

Q. Cannot you state from memory whether you ever communicated to the company that you had submitted to the Kirchoffs a proposition that the company would reconvey to them the premises known as the homestead premises upon the terms you have named, and that the Kirchoffs had accepted that proposition?

A. I cannot. I have some recollections about the matter; 163 it is spread over so much time, and during this time I, on more than one occasion, probably, got out of patience with them, waiting for the matter to be closed up.

Q. Out of patience with whom?

A. With the Kirchoffs. This matter, to the best of my recollection, covered nearly three years' time and was the subject of a large number of personal interviews. It is impossible for me to recollect the dates and places. I have stated as near as I can remember; but, as I said before, I have some recollection of getting out of patience on more than one occasion and advising some course to be pursued to close up the matter, as the company were pushing me to get a settlement with the Kirchoffs, and I believe that on one occasion I thought the shortest way was a foreclosure.

Q. Did this impatience with the Kirchoffs continue after you had made the proposition to them that the company would reconvey a part of the homestead and after they had accepted it?

A. As I said before, when the proposition was made to them he said it was all right; that he would do it; but time dragged along for some reason or other, and I received, to the best of my recollection, a number of letters urging me to get this matter settled up, which might have been one year or two years or longer from the date of the original agreement.

Q. Do you know when the blank deed was sent to the 164 company for them to execute, conveying the property on the corner of Pearson and Rush streets to Mr. Kirchoff?

A. I do not remember the date.

Q. Did you know of its having been sent?

A. I believe that Mr. Kendall informed me at the time that he sent it.

Q. Did Mr. Kirchoff know of its having been sent?

A. I don't know.

Q. Did that deed embrace the consideration that was a part of your proposition to Mr. Kirchoff and that was accepted by him, you say?

Objected to as not the best evidence and for lack of perspicuity.

A. I could not state the consideration that was named in that deed without a reference to the deed. I have an indistinct recollection that it covered but one lot. I also have an indistinct recollection that there was to have been another deed for the other lot, but this is not very clear in my mind just at this time.

Q. Was that deed sent as a part of your negotiations with Mr. and Mrs. Kirchoff, or was it sent as a new negotiation between you and the Kirchoffs?

A. I should say that the deed was sent as coming out of the proposition that I made to the Kirchoffs, but I believe that the deed was sent by Mr. Kendall and I cannot state exactly 165 what Mr. Kendall said to Mr. Kirchoff at the time he prepared that deed for the company to execute.

Q. Werre you the agent for the company when the Kirchoffs obtained their loan?

A. I believe I was in the employ of the company, but I was not in Chicago.

Q. The amount of the loan was $60,000?

A. I believe that was the amount.

Q. Do you know what use was made of the money by the Kirchoffs?

A. I do not.

Q. Do you know to whom it went?

A. I do not.

Q. Who executed the notes for it?

A. I believe Elizabeth Kirchoff and husband, but I am not positive.

Q. Do you know, either from what you knew at that time or from subsequent conversations with the Kirchoffs and Mrs. Diversey, whether Mrs. Diversey got any of that money?

Objected to as incompetent and immaterial.

A. I do not.

Q. What is your understanding on that subject?

Same objection.

A. I have none whatever.

Q. The notes were executed by Mr. and Mrs. Kirchoff and were secured by a trust deed upon the property of Mrs. Kirchoff
166 and also upon the property of Mrs. Diversy, was it not?

A. That is the way I recollect it, without a reference to the papers.

Q. Do you recollect when judgment was taken upon that note, if ever?

A. I think it was during the year 1878, but I am not positive.

Q. Was judgment also taken against Mrs. Diversey?

A. I believe it was.

Q. And did not the company in that way, through you and Mr. Kendall's proceeding, claim to hold a lien upon all the property of both Mr. and Mrs. Kirchoff and Mrs. Diversey under the judgment?

A. I suppose that the judgment did rest upon any property belonging to either of the parties.

Q. Was not that the object of taking the judgment?

A. It was.

Q. Do you know for what amount that judgment was obtained?

A. I don't remember.

Q. Can you recollect, in round numbers, for what amount it was obtained?

A. I should say $80,000 or more.

Q. Did Mrs. Diversey have any other children besides Mrs. Kirchoff?

A. Yes, sir.

167 Q. Did you have any negotiations with Mrs. Diversey and her other children as well as Mr. and Mrs. Kirchoff?

A. I don't remember that I did.

Q. Was it not also agreed that the company should release its lien upon the property of Mrs. Diversey obtained both by the trust deed and by the judgment entered up against her?

A. That is as I understand it.

Q. Was that a part of this same transaction between you and the Kirchoffs?

A. As I have had so little, if anything, to do with the matter of the judgment, I cannot state whether that can be considered a part of the same transaction or not; the judgment was entered by the attorney of the company, and nearly all, if not all, the negotiations, so far as that judgment was concerned, were conducted by him.

Q. Was it not your understanding that the negotiations which terminated in the giving of the quitclaim deeds upon the part of Mr. and Mrs. Kirchoff, and also upon the part of Mrs. Diversey, should relinquish all other and further liens that the company had upon their several properties?

A. It was.

Q. Were those negotiations substantially one transaction or not?

A. The negotiations, so far as the judgment is concerned, I had
so little to do with that I could not state exactly how they
168 were regarded, but I believe it was substantially one
matter.

Q. Was it your understanding that the Kirchoffs would have executed that quitclaim deed in any other connection than that the company should release its lien both upon their property and upon Mrs. Diversey's property, taking from Mrs. Diversey a quitclaim deed for a portion of the property that was included in her quitclaim deed?

A. I cannot say whether the Kirchoffs would have executed the quitclaim deed to the company or not under any other circumstances; I believe the deed from Mrs. Diversey to the company was a warranty deed and not a quitclaim.

Q. You understand, then, that the negotiations culminated in this, do you not, that Mr. and Mrs. Kirchoff should execute their quitclaim deed for the property included in the quitclaim; that Mrs. Diversey should execute her deed, whether warranty or quitclaim, for the property included, and that the company should relinquish all its right, title, and interest in the properties of both and should reconvey to the Kirchoffs the homestead property upon the terms you have named?

A. I understand that the Kirchoffs executed a quitclaim deed to
the insurance company in satisfaction of the indebtedness against
them, with the understanding on the part of the Kirchoffs that
they could buy the homestead property, as stated, and that
169 Mrs. Diversey gave a deed to the insurance company with
the understanding that the judgment against her should be
released and that she should be allowed to retain some forty acres
of the property which belonged to her, which she had given as a
part of the security for the Kirchoff loan. As to the dates of these

deeds or as to the exact time, I cannot state positively, the negotiations concerning these matters having covered nearly three years.

Q. The giving of this quitclaim deed, then, by the Kirchoffs was to be a satisfaction of the entire indebtedness, taken in connection with what portion of the property Mrs. Diversey quitclaimed or conveyed to the company by warranty deed?

A. I do not understand the question.

Q. Was one of the considerations upon which the Kirchoffs gave the quitclaim deed to the company to be this: that it should be in satisfaction of the entire indebtedness of the company against the Kirchoffs and Mrs. Diversey upon their notes, mortgage, and judgment?

A. As I recollect it now, the quitclaim deed from the Kirchoffs to the insurance company stated that it was in satisfaction of the indebtedness against the Kirchoffs. The deed from Mrs. Diversey, being another matter, was a subject of other negotiations, and I have stated that I think the deed from her was in consideration of the company's releasing the judgment against her and allowing her to retain forty acres of land that the insurance company held as security for the Kirchoff loan.

170 Q. Do you know if the Kirchoffs would have executed their quitclaim deed to the company if the company had not also agreed to release Mrs. Diversey from her liability upon the loan?

A. I do not.

Q. What the quitclaim deed expressed upon its face, then, that it was to be in satisfaction of the indebtedness against the Kirchoffs' entire loan, was true, as a matter of fact, was it not?

A. I could not state that, as the matter of the preparation of the quitclaim deed was conducted by Mr. Kendall, the attorney of the company.

Q. Did you have any part in making the negotiations for the quitclaim deed?

A. I don't remember just what part I took in that matter.

Q. Was not the making of the quitclaim deed included in the propositions that you made Mr. and Mrs. Kirchoff?

A. As I understood it, Mr. Kendall, the attorney of the company, desired the quitclaim deed to save the expense of a foreclosure, and, as he did not have abstracts of title to the various pieces of property held as security for the loan, he preferred to take a quitclaim deed instead of going on with the foreclosure, if in fact he had commenced it; I don't remember. Mr. Kendall and myself got estimates as to the cost of procuring abstracts of title to the various
171 pieces of property, and, as I recollect it now, it amounted to
some $1,100, and Mr. Kendall thought that a quitclaim deed, as I said before, would save the expense of a foreclosure, and this proposition to sell the homestead was made about that time. Mr. Kendall after some time succeeded in getting copies of abstracts of the various pieces of property, and after the deed from the Kirchoffs to the company was recorded he discovered that the title was not satisfactory to him and went on with his foreclosure, so that con-

cerning the negotiations for the quitclaim deed I cannot state just what part I took in the matter.

Q. Do you not recollect that it was a part of the proposition that you submitted to Mr. Kirchoff to reconvey to them the homestead property, as you have already detailed it, the Kirchoffs, on their part, to make to the company the quitclaim deed?

A. That is as I recollect it now.

Q. Do you not recollect, then, what that quitclaim deed was to be given for?

A. I suppose that it was in satisfaction of the indebtedness against the Kirchoffs.

Q. If you received from the insurance company at any time any letter informing you, in substance, that they would not reconvey to the Kirchoffs any portion of the property known as the homestead property for a less sum than $8,400, did you after that do anything that was contrary to that statement of intention on their part?

172 A. I think not.

Q. At the time you had run of the correspondence between you and Mr. Kendall and the company, had you not?

A. Mr. Kendall's correspondence I did not have free access to, but all the correspondence between myself and the company I had personal charge of.

Q. And you followed out the intentions, purposes, and instructions of the company as contained in those letters, did you not?

A. So far as I was able to do.

Q. When you received the letter dated December 3rd, 1879, in which the company stated that if Kirchoff did not pay his rent you had the usual remedy at hand to put him out, and that "there is no reason why you should not," did you not understand that if he would not pay his rent it was the wish of the company that you should put him out?

Objected to as immaterial.

A. I regarded it as a suggestion that in case he did not pay to put him out.

Q. Now, did you after receiving that letter ever tell Mr. Kirchoff that these rents were to be applied, not as rents, but as payments upon the property?

A. The only time I remember ever making that statement to him is the time that he signed the lease. I do not think I made that statement after that.

173 Q. Was the lease in writing?

A. Yes, sir.

Q. Did it in its body say that the sum of money to be received by the Kirchoffs for rents was to be applied upon the payment of principal?

A. I think not.

Q. It spoke of it as rents, did it not?

A. That is as I recollect it now.

Q. In your letter of November 26th, 1879, you say that he, Kirchoff, "claims that he settled with Mr. Kendall, with the understanding that he was to purchase the homestead upon the terms submitted some time since by Mr. Kendall." Did you know when you wrote that letter what those terms submitted by Mr. Kendall were?

A. Only as I have already stated, that the first payment was to be made at the end of six months instead of at the beginning of the six months.

Q. Did Mr. Kendall say that that was not the agreement?

Objected to as immaterial.

A. As I recollect it, Mr. Kendall said that he submitted it as proposition and Mr. Kirchoff understood that it had been agreed to. That is the way that I recollect it now.

Q. That Mr. Kendall had submitted it as a proposition and Mr. Kirchoff understood it as an agreement?

A. That is as I understand it now.

174 Q. Do you say that the controversy between Mr. Kirchoff and Mr. Kendall, at the time named in your letter of November 26th, was merely upon the point whether the first payment should be a cash payment or should be a payment six months after?

A. I have no recollection of any controversy between Mr. Kendall and Mr. Kirchoff. I stated in my letter to which you refer that Mr. Kendall said to me that he had not settled with Mr. Kirchoff, fixing the time of payment at the end of six months instead of the beginning of six months, but Mr. Kendall had submitted it to the company.

Q. Have you a clear recollection that that was the point of the letter—namely, simply the difference between whether the first payment should be cash or six months thereafter?

A. My recollection is not particularly clear on this point, but I do not see what else it could refer to.

Q. Did Mr. Kirchoff claim that by the agreement the first payment was to be six months after the making of the deed and not to be a cash payment?

A. I do not remember what claim Mr. Kirchoff made. This is as I recollect it: I went to see Kirchoff in connection with the settlement of this matter and was told by him that he had fixed the matter with Mr. Kendall. Not having been apprised of any arrangements, I took him to Mr. Kendall's office with me, found Mr. Kendall absent and made an arrangement with Kirchoff to meet him at Kendall's office the same day again, but Mr. Kirchoff did not 175 keep his appointment. I had some conversation with Mr. Kendall, in which Mr. Kendall said that he had not settled the matter. In my letter to which you refer this is what I referred to.

Q. That he had not settled the matter with Kirchoff?

A. I so understood from Kendall that he had not made a positive settlement, but Mr. Kendall had written to the company suggesting that a change be made in the terms of payment by the Kirchoffs.

Q. Why did you go to Mr. Kendall? Had you not the making of these propositions and their acceptance upon the part of Kirchoff within your control?

A. I went to Mr. Kendall as it was my custom to do in all cases where we were negotiating matters jointly. As to the making of these propositions and their acceptance, I have repeatedly stated my relations to be that I submitted propositions from the company to Kirchoff and any propositions which Kirchoff might make to the company for their consideration.

Q. If you before that time had made a proposition to Kirchoff for a reconveyance of the homestead to him, one of the terms of which was that the first payment should be a cash payment, and Mr. Kirchoff had accepted that proposition, why did you not so state to Mr. Kendall when he told you that he had made no such agreement?

A. Mr. Kendall understood the matter as thoroughly as I did myself. I have no doubt that the matter of the first payment 176 to be made in advance was talked over between Mr. Kendall and myself on quite a number of occasions and Mr. Kendall understood it just as well as I did. I believe that for some reason Mr. Kirchoff desired to change the negotiations and saw fit to consult with Mr. Kendall as to making the change.

Q. You say here that Mr. Kirchoff insisted that the original agreement was that the first payment should be within six months after the making of the deed and not a cash payment?

A. I have stated that Mr. Kirchoff told me that his understanding of my proposition was that the money was to be paid at the end of the year instead of the beginning of the year, and that the suggestion of Mr. Kendall that it be made at the end of six months was a compromise between Mr. Kirchoff's understanding and my proposition.

Q. Was that your understanding when you made the proposition?

A. My understanding was that the payment was to be made on the delivery of the deed to the Kirchoffs.

Q. And Kirchoff claimed that the proposition was that it was to be paid at the end of the year?

A. He so said to me.

Q. And then the proposition was taken to Mr. Kendall?

A. I do not so understand it. I did understand that Mr. Kirchoff for some reason went to Mr. Kendall and told him that he would make the payment at the end of six months, and I understand that Mr. Kendall wrote to the company about the matter.

177 Q. Let me see if I understand it. When you made the proposition to Mr. Kirchoff one of the terms of your proposition was that the first payment should be made upon the delivery of the deed; afterwards Mr. Kirchoff stated to Mr. Kendall that he understood that the first payment was to be made at the end of the first year, and Mr. Kendall thereupon wrote to the company stating that Mr. Kirchoff claimed that the first payment was to be made at the end of six months. Is that true?

A. I will restate it. The probabilities are that on more than one occasion Mr. Kendall was present when this matter was talked over with Mr. Kirchoff, and the proposition was that he purchase the homestead on Mr. Rees' valuation, the terms to be ten per cent. of the valuation in cash and ten per cent. a year until paid, with interest; after some time had elapsed—I cannot say how much—it appears that Mr. Kirchoff was under the impression that the first payment was to be made at the end of the year instead of the beginning of the year; my understanding was that it was to be at the beginning of the year or on the delivery of the deed from the company, and for some reason, as he had previously talked with Mr. Kendall and myself together, he went to Mr. Kendall and thought that he had fixed the matter with him by making the first payment at the end of six months instead of the beginning of six months or on the delivery of the deed, and Mr. Kendall said that he had not settled the matter with him on that basis, but
178 had written to the company making a suggestion that they
accept the payment at the end of six months.

Adjourned to 27th instant, at 9.30 a. m.

June 27th, 1884—ten o'clock a. m.

Testimony of E. A. Warfield continued:

It is here agreed between the respective counsel that the homestead property heretofore testified about by Mr. Warfield and by Kirchoff is the property described in the bill, to wit, lots two and four, in block twenty-one, in the canal trustees' subdivision of the south fractional quarter of section three, township thirty-nine north, range fourteen, in Cook county, Illinois.

Direct examination by Mr. Harbert:

Q. Who has the correspondence between you and the company in relation to this matter?

A. I believe that all the correspondence in the matter are held by the Union Mutual Life Insurance Company.

Q. Did you transfer the same to the defendant company?

A. The correspondence in this case was taken by the company from our office here in the city of Chicago.

Q. You have stated in effect in answer to a question put to you by Mr. Grosscup that the conveyance by the Kirchoffs was to be in satisfaction of any claim the company had against them.
179 Was that the only consideration for the deed? Did you wish
to be understood as meaning, or saying, rather, that that was the only consideration for the deed?

A. The understanding in regard to the quitclaim deed from the Kirchoffs to the insurance company was that it would save the expense of a foreclosure, and the insurance company, in consideration of this quitclaim deed, was to sell to the Kirchoffs what was known as the homestead property at whatever price it was worth; the price to be fixed and determined by Mr. James H. Rees. So far as the

Kirchoffs were concerned this is substantially as I understand the arrangement.

Q. They were also to be released from liability on the notes, were they not?

A. I so understood it.

Q. You have spoken about a judgment being entered against Mrs. Diversey. Does that fact refresh your recollection as to who signed the notes and as to whether she joined in the notes or some of them?

A. It does, and I should say that she signed the note in connection with the Kirchoffs.

Q. You have testified that you have endeavored to follow written instructions received of the company in letters. Please state whether or not you received also during this period instructions relative to the same matters orally which you also endeavored to follow out.

180 A. I received written instructions and oral instructions concerning this and other matters and endeavored to carry them out.

Q. In cases where action was necessary and no instructions were received please state whether or not you exercised discretion in respect to your conduct touching the same.

A. In cases where it was necessary I think that I did.

Q. You have stated that Mr. Kirchoff claimed that he was to have within the year to make his first payment, and that you claimed that he was to make the first payment on the delivery of the deed. Please state whether this difference was talked over between the Kirchoffs and yourself or Mr. Kendall in your presence as a serious matter or otherwise.

A. The matter was talked over between Mr. Kendall and Mr. Kirchoff and myself, and I never regarded it as a serious matter. In fact, I do not understand that the Kirchoffs insisted upon it.

Q. Do you understand the arrangement to have been that the Kirchoffs should have the two pieces known as the homestead property or that they should have the two or either of them at the appr*ia*sed value?

A. I understand that he was to have either one or both, just as he desired.

181 Q. Do you know whether the deed was prepared for the company to sign for both pieces or for one, and if for both were they together or separate? Please state the facts.

A. I do not remember of but one deed being prepared for the company to execute, and to the best of my recollection that covered but one piece.

Q. What was to be done with respect to the other? What did they decide to do with respect to the other?

A. In regard to the other it was to be sold at the price fixed by Mr. James H. Rees.

Q. In case the Kirchoffs did not decide to take it?

A. Yes, sir.

Counsel for the complainant gives notice to the counsel for the defendant that he would like to have present at the next adjournment the quitclaim deed prepared for the signature of the Union Mutual Insurance Company, purporting to convey to Elizabeth Kirchoff the homestead property or part of it, also the appraisement of Mr. Reese, for the inspection of counsel for the complainant and with a view of introducing in evidence such parts or portions thereof as shall seem proper, the correspondence between Mr. Kendall or Mr. Warfield to the company respecting the Kirchoff loan.

Counsel for the defendant will be happy to furnish counsel for the complainant any papers that the defendant may have in his possession, and will produce before the master all the letters between the company and Kendall and Warfield.

182 EDWIN A. WARFIELD.

Adjourned until July 3rd, 1884, at ten o'clock a. m.

EDWIN A. WARFIELD.

KIRCHOFF
vs.
U. M. INS. CO.

MARCH 9TH, 1885.

Present: W. S. Harbert, for plaintiff, and Edwin R. Swett, for defendants.

EDWIN A. WARFIELD.

Redirect examination by Mr. HARBERT:

Q. I desire, Mr. Warfield, to call your attention to a letter to the company written by you, dated November 26th, 1879, set out in your cross-examination, in which you say, "I saw Mr. Kirchoff a few days since and had him go with me to Mr. Kendall's office, but found Mr. Kendall absent. Mr. K. agreed to meet me at Mr. Kendall's office the same afternoon at four o'clock, and I have not been able to see him since." Please state the purpose of your going to Mr. Kendall's office with Mr. Kirchoff, as well as your object in making an appointment to meet Mr. Kendall and Mr. Kirchoff at Mr. Kendall's office the same afternoon.

A. I saw Mr. Kirchoff some days preceding the date of this letter, and he wanted to know from me why the foreclosure suit 183 was going on, as he thought that matter had been settled under this agreement between himself and the company to purchase the homestead property, and as that was a matter in the hands of Mr. Kendall, the attorney of the company, I preferred to have Mr. Kirchoff go with me to Mr. Kendall's office and let him explain the reason why that foreclosure suit was going on. We went together to Mr. Kendall's office, and, as stated in my letter, Mr. Kendall was absent, and Mr. Kirchoff agreed to meet me at that office the same afternoon.

Q. You say that matter was in the hands of Mr. Kendall. What matter do you refer to?

A. I refer to the matter of the foreclosure of that as well as other loans. The foreclosure or matters pertaining to the foreclosure of loans were in charge of Mr. Kendall, the attorney, and I preferred that Mr. Kendall should explain to Mr. Kirchoff the reason for going on with that foreclosure suit.

Q. Do you mean the entire proceedings or simply the proceedings in court as an attorney?

A. I mean the proceedings in court, as attorney for the company.

Q. What conversation, if any, did you have with Mr. Kirchoff in your office at that time, before you went to Mr. Kendall's office; what did he say and what did you say in reply?

A. Mr. Kirchoff, as I recollect now, had been served with some notice to appear in this case, and he wished me to explain to him the reason for going on with the suit. As I stated before, 184 he understood that the agreement between the insurance company and himself had put an end to any further proceedings in court, and I preferred to have Mr. Kendall explain his reasons for going on with the foreclosure suit.

Q. What did you say to him then and there about it?

A. I have already stated that I told Mr. Kirchoff that Mr. Kendall found that the title in the insurance company acquired by the quitclaim deed from the Kirchoffs was not satisfactory to Mr. Kendall, and that he decided to go on with the foreclosure suit in order to perfect the title. I think there were some judgments against the Kirchoffs.

Q. State whether or not this was before or after the receipt of the letter from the company in which the company advanced the price, apparently.

A. This interview with Kirchoff was some days prior to November 26, '79. I should have to refresh my recollection — to the letter you refer to as coming from the company.

Q. I call your attention to the letter of November 5th, 1879, from De Witt to you, and ask you whether or not after the receipt of that letter you did or did not go forward towards carrying out the contract with Mr. Kirchoff.

A. My letter to the insurance company dated November 26th, 1879, was written, in all probability, after the receipt of the letter from De Witt to me dated November 5th, '79. It appears from my letter that I proceeded to carry out the agreement between Mr. Kirchoff and the insurance company, so far as I was able to.

185 Q. Again calling your attention to the letter of November 26th, please state what you meant by the expression, "He claims that he settled with Mr. Kendall with the understanding that he was to purchase the homestead on the terms submitted some time since by Mr. Kendall." What do you refer to there?

A. As I recollect it now, Mr. Kirchoff went to Mr. Kendall to see if he could modify the agreement in respect to the first payment. The agreement was that Mr. Kirchoff was to pay one-tenth of the price on the delivery of the deed from the insurance company to him, and he asked Mr. Kendall to see if he could modify that payment, making it six months from the date of the deed, and I believe that Mr. Kirchoff understood from the conversation with Mr. Kendall that that was satisfactory to him, and Mr. Kirchoff stated to me that he had arranged that matter with Mr. Kendall. This is as I recollect it now.

Q. And where in said letter you state that Mr. Kendall said that such was not the case, what did you mean by that?

A. I meant by that that Mr. Kendall said that he had not changed the original agreement, but at Kirchoff's request had made a suggestion to the company.

Q. A suggestion favorable to Mr. Kirchoff in respect to his proposition?

A. Yes.

186 Q. Was there at the date of this letter of November 26th, 1879, anything further that Mr. Kirchoff was to do under his agreement which he had not already done?

A. I do not recollect of anything. I should say there was not.

Q. In your cross-examination when asked if you had ever applied for a writ of assistance you said you did not know. Have you any more distinct recollection on that subject now?

A. I have. I know that I did not.

Q. Please state whether or not at the date of the giving of the deed by Kirchoff to the company the agreement to which you have testified was complete or otherwise—that is to say, whether the terms of that agreement were definitely agreed to or not.

A. I understand that they were definitely agreed upon.

Q. Please state, if you have not already done so, what agreement, if any, was entered into between Kirchoff and the company through you relative to the effect of his taking a lease of part of the homestead property from the company on his agreement with the company for a reconveyance.

A. I have already stated that at the time Mr. Kirchoff signed the lease for the homestead that I stated to him that his rents would reduce the cost of the property under that agreement.

Q. Do you know how much, if anything, Mr. Kirchoff paid on that agreement?

187 A. I should have to refer to the records in the matter. I have forgotten how much.

Q. Can you approximate it?

A. I should think it would possibly be two or three hundred dollars; possibly more. I do not remember.

Q. Had you any general instructions from the company relative to disposing of property at certain rates or settling with mortgagors on certain terms by conveyance to them of mortgaged property? If so, please state the same.

A. I had general instructions from the insurance company in regard to the reduction of interest on all loans here in Chicago, and general instructions in regard to the sale of real estate as fixed by Mr. Rees and Mr. Morey, and the property was sold or offered for sale at the appraised value of these gentlemen. Sales were made by me and reported to the insurance company, as I recollect it now; also agreements to reduce the rate of interest from eight to six per cent. on condition that the borrowers pay one-tenth of the principal down and the balance in twenty semi-annual payments.

Q. And had you or not general instructions with reference to any or all property of the company here to that effect?

A. I had general instructions as to the sale of property and as to the reduction of interest, as I have stated.

188 Q. What, if any, instructions did you have from or conversations with Mr. Sharp, the vice-president, when he was here in regard to a settlement of this Kirchoff business?

Objected to as improper and incompetent.

A. Whenever Mr. Sharp was here and this matter came up it was talked over with him and his instructions, if he had any, were carried out if it were possible to do so. I do not remember any particular instructions in this case from Mr. Sharp, although I presume he was here on several occasions when the matter was under consideration.

Q. Was he or was he not fully advised of the situation of affairs whenever he was here?

A. He was fully advised whenever he was here?

Q. Please look at the letter of Mr. De Witt to Mr. Kendall, of August 3rd, 1877, in which he says: "At a meeting of the finance committee this morning we considered the matter of the Kirchoff loan, and we propose to let him have his own way about it, but get the time reduced to five years if you can. The reasons moving the finance committee in this matter are simply these: They deem this the easiest and quickest way to get title to the property," etc. Please state whether you ever saw that letter, and, if so, state whether or not the reasons given in that letter for letting Kirchoff have his own way influenced you to any extent in making your agreement with Kirchoff, and whether they subsisted at that time. Please explain fully.

189 A. I have no positive recollection of seeing the letter, but I believe I did see it from the fact that I am somewhat familiar with it. The reasons moving the finance committee at that time for letting Kirchoff have his own way subsisted at the time the agreement was made with Kirchoff, and as a matter of course these reasons had some influence in the matter.

Q. I call your attention to a portion of your cross-examination of June 13th, 1884, where you begin to answer a question and are interrupted by a further question, and you state that the rents which he paid on the homestead property would reduce his debt the amount of the rent he paid. Please explain what you meant by that answer.

A. I meant by that answer that the rents that were paid for the homestead of Kirchoff would be applied on the purchase of the homestead as per the agreement referred to.

Q. Were the instructions under which you acted for the company always in writing?

A. No, sir; they were not.

Q. Please state how they were given.

A. Instructions were received by letter or in person when the officers of the company were here or when I was at the company's office in Boston.

Q. Please give me an idea of the volume of the business
190 transacted by you for the company—that is, the amount of
business that was being attended to constantly—how many
loans, if you can approximate it, were requiring attention at one
time.

Objected to as misleading and immaterial.

A. I cannot state the number of different loans which required attention. I believe, however, that the amount of money loaned, which was directly under my charge here, amounted to between three and a half and four millions of dollars.

Q. And what was the average amount of the loans?

A. I don't know. To guess at it, I should say $3,000; possibly $4,000. I may have put the average a little small; the number was up in the hundreds, but there was quite a good many small loans.

Question and answer objected to as immaterial.

Upon stipulation it is agreed that the answer of Julius Kirchoff to an application for a writ of assistance in the United States court and endorsements thereon, marked Exhibit Q, may be introduced in evidence as though it were the original, subject to all objections that might be made to the introduction of the original paper.

EDWIN A. WARFIELD.

Mr. Grosscup: We object, of course, to proving the authority of
the agent by the declaration of the agent.
191 The Court: He says he had it either by verbal instruc-
tions or written instructions from the officer; verbal instruc-
tions can be proved by parol.

Mr. Grosscup: Yes; but they are asking whether he had authority.

"Ex. Q."

Answer of Julius Kirchoff.

United States Circuit Court for the Northern District of Illinois.

Union Mutual Life Insurance Company
vs. } In Chancery.
Julius Kirchoff *et al.*

The undersigned, in response to the order heretofore entered herein, upon the petition of James R. Page, requiring him to show cause why a writ of assistance should not issue in said cause directing the marshal to put the receiver in the above-entitled cause in possession of the property in the bill described, says that the issuance of such writ would be inequitable and unjust and calculated to prejudice the rights of the defendant Julius Kirchoff.

The undersigned begs leave to submit herewith the following statement of facts as grounds for resisting the application for said order:

192 Previous to the institution of any foreclosure proceedings in this case, an agreement was entered into between the complainant and said defendant, whereby for the consideration hereinafter named said defendant was to quitclaim to said complainant his interest in certain of the property described in the bill of complaint, including lots 2 and 4, in block 21, canal trustees' subdivision, in the west half of the southeast quarter of section 3, township 39, range 14 east, said last-described property being the homestead of said Kirchoff, and a lot near the same, in the vicinity of Rush and Pearsons streets, and was to consent to a foreclosure on all of the property described in said bill. On behalf of the complainant it was agreed and distinctly understood, with reference to the two pieces of property last described, that the same should be bid off, at a sale to be made under the decree to be entered, at such sum as the complainant should see fit, and that after the same had been made said defendant, Kirchoff, should be entitled to a reconveyance of said two lots last above described upon payment to complain-t of the sum of $10,000—that is to —, said complainant was to convey said two parcels of property to defendant Kirchoff, or to such person as he should nominate, for a consideration of ten thousand dollars, in ten payments of one thousand each, one thousand to be paid
193 upon the tender by complainant to said Kirchoff of a deed of
said property within one year from the date of the master's deed to complainant under said decree, and the residue of the unpaid consideration of ten thousand was to be secured by a lien on the lots and made payable in nine equal payments of one thousand dollars each as aforesaid, and this respondent executed a quitclaim deed to said complainant in pursuance of said agreement.

The undersigned now avers that complainant, regardless of its duties and obligations in the premises and contrary to justice and equity, claims to own said property absolutely and refuses to convey the same to the undersigned in pursuance of said agreement.

The undersigned further states that according to the terms of said agreement no deficiency decree was to be entered, or, if entered, the same was to be cancelled without payment; that the undersigned is not indebted to said complainant in any sum whatever; that he has been willing and still is willing to faithfully fulfill his undertaking in the premises; that said property is worth a sum greatly in excess of ten thousand dollars, and that at the time of the foreclosure the property covered by the liens described in the bill was worth much more than all sums of money due from the undersigned to said complainant, and that he would not have executed said deed but for the agreement so made by said complain-
194 ant to transfer to him the title to the said lots two and four
upon the terms named.

Said Kirchoff further states that his solicitors have in course of preparation a bill in chancery, setting up the foregoing facts and asking that complainant be required to execute its undertakings in the premises, or in default thereof that the decree herein be set aside and held for naught.

The undersigned further states that he has frequently offered to perform and has at all times been ready and willing to perform said contract upon his part by the payment of one thousand dollars and the proper securing of the balance of said sum of ten thousand dollars upon the execution and delivery to him by said complainant of a deed of said property, and he now here avers his readiness to perform said contract upon his part according to the terms of said agreement.

Inasmuch, therefore, as the complainant cannot be prejudiced by delay, your objector asks that no order of restitution be issued herein for a reasonable time at least.

JULIUS KIRCHOFF.

195 STATE OF ILLINOIS, } *ss:*
Cook County, }

Julius Kirchoff, being duly sworn, on oath deposes and says that he has read the foregoing instrument and knows the contents thereof, and that the allegations therein are true.

JULIUS KIRCHOFF.

Subscribed and sworn to before me this 16th day of November, 1881.

LOUIS DANZIGER,
Notary Public.

Filed in United States circuit court Nov. 16, 1881.
W. H. BRADLEY, *Clk.*

OCTOBER 7TH, 1884—10 a. m.

Present: W. S. Harbert, Esq., for plaintiff; Edward R. Swett, Esq., for defendants.

ROBERT B. KENDALL, a witness on behalf of complainant, sworn, was examined by Mr. HARBERT, and testified as follows:

I am of lawful age and reside in the city of Chicago.

Q. Are you acquainted with the parties to this suit?

A. I am.

Q. Were you formerly in the employ of the defendants, The Union Mutual Life Insurance Company of Maine; if so, from when to when?

196 A. I was in their employ for several years; I think from 1875 to 1881.

Q. In what capacity?

A. As attorney-at-law.

Q. Where?

A. Part of the time in the city of Boston; for the most of the time in the city of Chicago. I was in their employ in the city of Chicago from the fall of '76 until some time in the winter of '81.

Q. As attorney and solicitor for the defendant company, what nature and class of business came within your purview?

A. Well, I was in charge of the making of collections of loans, foreclosing mortgages and trust deeds, and had sort of a general supervision over the titles of the company (or rather of the property owned and acquired by the company); had something to do with their sales, etc.; acted as general solicitor for them in all their legal matters here in Chicago and vicinity.

Question and answer objected to, as it does not appear that the appointment of Mr. Kendall was not in writing, and as not being the best evidence.

Q. Do you remember a loan of the company to Mrs. Kirchoff for about the sum of $60,000?

A. I recollect there was such a loan on the books of the company during the time I was acting for them in that capacity.

197 Q. Please state the general nature of the loan, who made the papers, and what was covered, in general.

A. It was a loan made by the company to Mr. and Mrs. Kirchoff for $60,000 in May, 1871—I think it was May, '71, the papers were dated—secured by a promissory note of Julius Kirchoff and Elizabeth Kirchoff, his wife, and Mrs. Angela Diversey, who was, as I understood, Mrs. Kirchoff's mother, and by a trust deed executed by the same persons to Levi D. Boone, as trustee, conveying a large amount of real estate in Chicago, located at different places, and also some property in the country, in the town of New Frier, situated on the lake shore, some miles north of Evanston.

Q. Was there ever more than one such loan to these parties?

A. There was not, to my knowledge.

Q. Please state in whom the title to this property securing this loan was, and, if it was in more than one person, please state in whom.

A. The title to the property in the country, in the town of New Frier, was in Mrs. Diversy. The title to most of the property in the city was in Mrs. Kirchoff, and I think there were some lots also included in the trust deed, the title to which was claimed by Mr. Kirchoff, but, as I recollect, that title failed. The most of the city property, if not all of it, was in Mrs. Kirchoff.

Q. Please state whether or not that loan was paid at its maturity.

198 A. It was not.

Q. Please state whether or not, to your knowledge, an arrangement was entered into between the company and Mrs. Kirchoff, through her husband, Mr. Kirchoff, concerning the property which had belonged to them or one of them, whereby for certain considerations a part of that property was to be transferred to them.

Objected to as leading.

A. There was some arrangement of the sort entered into, as I understood.

Q. Please state the terms of any agreement between the company and the Kirchoffs respecting the property covered by such trust deed; state the facts as nearly as you can in chronological order.

Q. Well, the loan being overdue and unpaid and a large arrearage of interest, taxes, etc., I was instructed, or, rather, in pursuance of my general instructions as attorney for the company, I commenced a foreclosure suit in the United States circuit court in July, 1878, to foreclose the trust deed. There had been some negotiations between the company and Mr. and Mrs. Kirchoff in regard to some terms of settlement, if possible, to avoid the foreclosure proceedings, but they did not seem to be able to carry out the terms talked of at that time, and I finally commenced this foreclosure suit. Mr. Kirchoff then made some arrangement through
199 Mr. Warfield, I think, the financial agent of the company here at that time, for redemption of his homestead, by which, I understood, it was agreed that he could redeem or repurchase from the company upon the payment of its appraised value, the price to be fixed by appraisers to be selected by the parties interested—that is, by the Kirchoffs and the insurance company. These negotiations were not conducted by me. I was only advised of them as they were going on by Mr. Warfield and by conversations with Mr. Kirchoff. Shortly after the suit for foreclosure was commenced, in pursuance of that arrangement, Mr. James H. Rees was agreed upon as an appraiser of the property, and I went with Mr. Rees, Mr. Warfield, and Mr. Kirchoff one day to visit the property; we visited all the city property, I think, and Mr. Rees appraised the value of it and I informed Mr. Kirchoff. I recollect of the amount of the appraisal that Mr. Rees put upon the homestead lots that he wished to redeem—one of which was $7,000 and the other was $2,500, as I recollect. Mr. Kirchoff expressed his satisfaction with the price and said that he would undertake to pay that if the company would make him a title to the property and release him from any further liability on his note and trust deed, and there was a general understanding to that effect; that he could buy the property back upon those terms and upon the terms of payment that the company had made in many other cases with parties similarly situated—that
200 is, upon partial payments, dividing the amount into ten equal yearly payments, spreading it over a period of years in that way, with a low rate of interest. I don't recollect exactly what it was; it may have been six per cent. or may be four, I don't remember.

Answer objected to on the ground that it appears that the agreement for the redemption of the property was made with Mr. Warfield, and that the witness has no personal knowledge of it; also on the ground that it has not been shown that either the witness or Mr. Warfield had authority to make such an agreement.

Q. Please state whether that agreement between the Kirchoffs and the company contemplated the making of a deed from the Kirchoffs to the company and how a title was to be given by the company to Mrs. Kirchoff and how the deferred payments were to be secured. Please state what you may know about the matter and any other facts that you may remember concerning it.

A. Well, I was present at several interviews between Kirchoff and Warfield, and I suppose took part in the conversation in relation to the transaction. It was all talked over on that day we went to visit the property; that was the result arrived at, and it was thought at the time that Mr. and Mrs. Kirchoff could execute their deed to the company of all the property belonging to them 201 involved in the mortgage, and the company could convey to Mrs. Kirchoff the homestead lots—the two lots in question—and thereby make a good title to them and take a mortgage back as security for the deferred payments. The matter seemed to hang fire for a good while from one cause and another, partly owing to press of other business and partly owing, I think, to Mr. Kirchoff not being ready to make the first payment, and I went on with the foreclosure, but did not press that very much, thinking that the matter might be settled up without going through the whole process of foreclosing it. The case was pending until some time in the fall of '79, when I was urged by Mr. Warfield and also by Mr. Kirchoff to prepare the necessary papers for carrying out this agreement, and I prepared a quitclaim deed from Mr. Kirchoff and his wife to the insurance company of the whole property covered by the trust deed, except that belonging to Mrs. Diversey, and also prepared a deed from the company to Mrs. Kirchoff of the homestead lot which is situated on the corner of Pearson and Rush streets. I think it is lot No. 2 in the subdivision. I gave the draft of the deed to Mr. Kirchoff to get it executed by his wife and himself, and I sent the quitclaim deed from the insurance company to Mrs. Kirchoff to the office of the company, in Boston, with a letter in relation to the execution of it. Mr. Kirchoff, at that time, however, wanted some modification of the terms of payment; he wanted the first payment, instead of being made cash upon delivery of the 202 deed, to be postponed until the end of the year, and finally said that if it could be put off until the spring following he would make it then; that it would be much more convenient to him to have it payable at that time than upon the delivery of the deed; and I wrote to the company, stating that Mr. Kirchoff wished to make that modification of the original agreement. I recollect I told Mr. Kirchoff I did not think that the company would do any such thing, but to gratify him I wrote them, stating his wishes in the matter, and in due course of mail I received a reply from the company, in which they said they declined to accede to his request, and also informed me that they would require a large- proportion of the purchase-money to be paid in advance than had been talked of here. I do not recollect exactly what terms they said they should demand; my recollection is that they said they should require one-quarter in cash. Anyhow, they made a material change in the terms of payment, and I don't know but they changed the price of the property.

Answer objected to on the ground that it is not responsive; also to so much of it as refers to instruments in writing or any letters written or received by the witness, and also because it has not been shown that the witness had the authority to make such an arrangement as he has testified to.

203 Q. Please proceed to give the further facts relating to the transaction—what occurred and what was said and done.

A. After I gave Mr. Kirchoff the draft of the deed to be executed by himself and wife he retained it for a long time—several weeks, nearly two months, I think—before he brought it in to me executed and acknowledged. I did not prepare the deed from the company to Mrs. Kirchoff until after he had brought in their deed to the company. Upon his delivering the deed to me I then prepared a deed from the company to Mrs. Kirchoff, as I have before stated, and forwarded it to the company.

Q. At the time you forwarded the deed for the company to execute was it the purpose of the company to obtain title through the quitclaim deed from the Kirchoffs rather than through the foreclosure proceedings?

A. Yes; that was the purpose at that time. I had made a lot of judgment creditors parties defendant to the foreclosure proceeding, the abstracts of title showing a number of outstanding judgments against Mrs. Kirchoff, but Mr. Kirchoff assured me that those judgments had in fact all been settled. I then made an examination of the records of the courts and satisfied myself that the judgments had been settled and discharged of record since the abstracts had been made up, and therefore I saw no reason why the company could not settle the matter by taking a deed from the
204 Kirchoffs and making a deed to Mrs. Kirchoff, taking her
mortgage as security, as had been previously agreed upon; but about this time (I think just after I sent the deed to the office of the company) in re-examining the abstracts of title to this homestead lot I discovered that there was an outstanding title under an execution sale by the sheriff on a judgment some years before against Mrs. Kirchoff in favor of one Eben F. Runyan. The judgment had been recovered by him and the homestead had been sold under an execution and had been purchased by one Stanford, and I saw no way of making the title complete in the company except by going on with the foreclosure and having the property sold under a decree. I then amended my foreclosure bill by making Mr. Runyan and his assignee in bankruptcy, Robert E. Jenkins, and Mr. Stanford defendants.

Question and answer objected to as immaterial.

(Witness continuing:) Mr. Kirchoff, upon being served with the order of court making Runyan a defendant (Runyan being at that time a non-resident and having to be served in Nebraska, and the law requiring an order of that kind to be served upon the occupant of the property), came into my office and inquired what I was going on with a foreclosure for against his homestead, and claiming that his understanding was that everything was to be settled up by the deed, and he was not to be troubled with any further proceed-205 ings in court. I explained to him the circumstances making it necessary to do this for the benefit of the title, and told him it would make no difference except in delaying the consummation of the arrangement with him; that it would be better for him, as well as for the company, that the foreclosure proceedings should be completed in order to cut out this intervening lien.

Q. The arrangement to which you have referred, as I understand it, related to what was termed the homestead lots. Please describe those lots.

A. The lot on the corner of Rush and Pearson streets was the lot on which the house stood, which was occupied by Mr. Kirchoff and his wife as a residence. Then there was another lot in the rear of that, fronting on Pine street, which was vacant. Mr. Kirchoff wanted to redeem the two lots together.

Q. The deed which you have referred to as prepared by you and sent to the company to be executed, described, you have said, but one lot. Why did it not include both?

A. Well, I had some talk with Mr. Kirchoff at the time about it, and I think I told him the corner lot there was as much as he was really able to take care of—pay for—and I think I tried to dissuade him from undertaking to buy back the two for that reason. More than that, I do not exactly recollect the reasons that induced me to make the deed for one lot only. I know I did prepare the deed for the corner lot on Rush and Pearson streets, which was his homestead.

206 Q. Did you afterwards attempt to dissuade him from redeeming both?

A. I don't recollect that I did after I probably thought that one at a time was as much as he had better undertake. I know he seemed to find it difficult to raise the necessary money to make his first payment, and I thought he might pay for one lot at that time easier than he could pay for the two.

Q. Did he ever, in fact, release or relinquish his claim upon the other lot?

A. No; I do not understand that he did give up his intention of buying back the other lot.

Q. What did you do with the deed from Kirchoff and wife to the company?

A. I filed it for record in the recorder's office.

Q. Please state whether or not one or more of the officers of the company were here in person frequently during the period you have referred to.

A. Oh, yes; they were here frequently—the president and vice-president and some of the directors. One or the other of them was here a great deal of the time.

Q. Please state whether or not the officers of the company who were here—the president or the vice-president—were apprised of what was done towards the consummation of the agreement between the company and the Kirchoffs to which you have referred.

207 A. I do not recollect—that is, I do not recollect of myself apprising them of the matter except by the letter I have mentioned. I may have written them on the subject and may not; I do not recollect.

Q. Please state whether or not it was your custom to apprise them when they came here of the condition of matters in your office.

A. Yes; it was.

Q. Also whether or not it was your custom to apprise them of the condition of any contracts in process of completion or execution.

A. I always reported on those that I had specially to do with personally when one or the other of the officers was here, or by correspondence. I used to make them a report every month of the work that I was doing at my office. My business, of course, related more to the legal department, foreclosure of the mortgages, etc., and not so much to the selling of the property—only incidentally. Mr. Warfield was the agent for negotiating with parties for sales and settlements, and I only had to do with*at* that incidentally in connection with the legal part of the business.

Q. How was it with reference to this particular matter?

A. I don't recollect, more than I have stated in regard to my communications with the officers of the company.

208 Q. I now refer more particularly to your conversations with them while they were here, as to whether or not they were apprised of what you had done in the matter.

Objected to as leading.

A. I haven't any definite recollection on that subject. I did what I did in this matter, in drawing up this deed which I sent to the company, etc., in pursuance of advices which I received from Mr. Warfield; he was at that time urging a settlement of this Kirchoff matter upon me, rather pressing me to close the thing up, as far as I had to do with it.

Q. Did you make any arrangement or had you any conversation with Mr. or Mrs. Kirchoff in regard to their paying rent for the homestead property and having the amount of such rent credited on their redemption money?

Objected to as leading.

A. None.

Q. Do you recollect what authority you received and from whom, if any one, to go forward with the matter of closing the arrangement with the Kirchoffs after the receipt by you of the letter from the company declining the modification of the contract suggested by Mr. Kirchoff?

A. I do not recollect that I received any instructions from anybody to go on with the matter. I went on with the foreclosure matter, of course, incidental to my general business. I did

209 not do anything after that time with reference to this agreement with the Kirchoffs for the repurchase of their property that I know of.

Q. Was it before or after the receipt of that letter that you received the deed from the Kirchoffs?

A. I received the deed from the Kirchoffs before I received this letter from the company. Mr. Kirchoff brought the deed in and delivered it to me, and thereupon I prepared the deed conveying the homestead lot to Mrs. Kirchoff.

Q. Where was Kirchoff living during these negotiations?

A. He was living in this house on the corner of Rush and Pearson streets.

Q. How far had the foreclosure progressed at the time your relations with the company terminated?

A. The property had been sold by a master in chancery and the sale had been confirmed.

Q. Do you remember the date of the sale by the master in chancery?

A. (Referring to a memorandum.) The sale by the master in chancery was on the 20th of October, 1880.

Q. When, then, could the company have given a good title to the homestead lots—when would the company have been entitled to a master's deed?

A. In 15 months from that date. That would be on the 20th of January, 1882. The master's deed was executed on the 21st of January, 1882.

210 Q. Had you authority to do whatever you did in or about the Kirchoff loan?

A. I had.

Q. Who was the president of the company?

A. Mr. John E. De Witt.

Q. Who was the vice-president?

A. Mr. Daniel Sharp.

Q. What other officers or agents of the company ever visited the Chicago office?

A. Mr. Edward R. Seccomb, who was one of the directors of the company, was here frequently for several years. Other directors of the company occasionally visited Chicago.

Q. Who was Mr. Warfield?

A. Mr. Warfield was known as the financial agent of the company here in Chicago.

Q. As such, what were his duties?

Objected to as incompetent and on the ground that it had not been shown but that the appointment of Mr. Warfield was in writing.

A. The nature of Mr. Warfield's appointment, duties, and business here was to exercise a general supervision over the investments of the company here, collect the interest and principal of the loans, negotiate with parties for the sale of property that the company had acquired title to, and make himself generally useful in that capacity, I suppose.

Answer objected to for the same reasons as the preceding.

211 Q. Did he so act?

A. That was the kind of business that Mr. Warfield did. He may be said to have so acted; he was very busy all the time over those matters.

Q. Please state whether you received more or less directions from these several officers of the company and acted thereon.

Objected to as leading.

A. Oh, yes; I received directions from them whenever they were here about various matters and acted upon them accordingly to the best of my ability.

Answer objected to as general and not referring to matters in controversy.

Q. How was it with reference to this particular matter?

A. Whatever I did in connection with this particular matter was done pursuant to my general or specific directions from the officers of the company. Of course many things were necessarily left to my discretion.

Q. Where was your office at that time?

A. At 133 La Salle St., in what is known as the Boone block.

Q. In the same building with the offices of the company?

A. In the same building with the offices of the company. The insurance agent was in there, and Mr. Warfield was in there, and I was in there; we were all there.

212 Q. State whether or not you and Mr. Warfield freely conversed with each other with regard to the business of the company, and particularly with regard to this Kirchoff business.

A. Yes; it was our habit to work together—to discuss matters of business pertaining to the company together—and act together as far as possible, and we did so in this particular matter with Mr. and Mrs. Kirchoff. We were in frequent consultation from time to time.

Q. Please state whether or not the officers of the company when here freely conversed with Mr. Warfield and yourself with regard to all the business of the company, including the Kirchoff matter.

A. The general business in our hands was always more or less talked over and discussed when the officers were here, and the matter of the Kirchoff loan was a great many times discussed in its various aspects by the officers of the company, the president, Mr. Warfield, and myself and the vice-president, too, I think.

Answer objected to as not referring to the particular agreement testified to by the witness.

Q. Was that also true with reference to the particular agreement you have testified to?

A. I think the subject of Mrs. Kirchoff's redemption or repurchase of that property had been talked over in my presence. I don't recollect any particular time or place, but I know it was a matter of general conversation. I think it was well 213 understood by the president of the company and possibly by the other officers that Kirchoff was to be allowed to buy back this homestead property. I know I understood that part of it as the settled understanding all around. There was a good deal of talk about it at different times. The matter hung fire for a long period from one cause and another, but I never understood that it was abandoned or given up untii the receipt of that letter that I got from the company when I sent the deed down there. I prepared that deed in pursuance with what I understand was the arrangement.

Q. Did the company ever, to your knowledge, tender to Mrs. Kirchoff any reconveyance of the property?

A. No, sir.

Q. Did they ever, to your knowledge, tender back the quitclaim deed before its record?

A. No, sir.

Q. Did Mr. Kirchoff decline to go forward with his part of the contract, to your knowledge?

A. No; I never understood that he declined to do it.

Q. Did the company, to your knowledge, ever tender any deed to Mr. Kirchoff of the homestead or any encumbrance back for him to sign?

A. No; never did.

214 Q. Has the company, to your knowledge, ever done anything towards complying with its part of the contract, except the receiving by it of the consideration which it was to receive?

A. I don't know that the company ever did anything about it.

Q. At that time did you say your relation with the company terminated?

A. Some time in the winter of 1881.

Q. State whether or not during 1880 and 1881 you had any conversations with Mr. Kirchoff; and, if so, what his attitude was with regard to the contract.

A. Well, I don't remember any conversation with reference to the matter with Mr. Kirchoff except at the time I amended the foreclosure bill by making Runyan and other parties, as I have already testified, and that was in 1880, I think early in the year (referring to memorandum). That amendment was made on the 17th of January, 1880.

Q. When was that with reference to the receipt of this letter to which you have referred?

A. It was subsequent; I think it was some time in the fall, I should say perhaps in October, that that letter was written; I don't remember, of course, the date of it, but I know it was in the fall of 1879, and I know I made this amendment in January, 1880.

Q. State whether or not at the time of making this amendment it was the intention of the company to carry out its agreement with Mr. Kirchoff for a reconveyance of the homestead. 215

Objected to as calling for a conclusion of the witness.

A. I don't know what the intention of the company was at that time, except as gathered from the letter which they wrote me, in which they declined to make the modification in the terms of payment that Mr. Kirchoff asked for.

Q. After the company declined to make the modification Mr. Kirchoff asked for his accommodation, state whether or not he was still anxious and willing to go on with the contract.

A. He so expressed himself to me.

Q. Now, you have referred to a Mrs. Diversey being in some way connected with this loan. Please state what, if any, settlement was made with the Diverseys, and what, if any, connection it had with the settlement with the Kirchoffs.

A. I made an arrangement with Mrs. Diversey for a deed of a portion of the property owned by her, which was covered by the trust deed, but that had nothing to do with this Kirchoff matter. Mrs. Diversey set up some defense to the foreclosure proceedings, and for that reason and for some other reasons pertaining to the title of the land owned by her I made a sort of compromise settlement with her, allowing her to keep a portion of her land and make a deed of the rest of it to the company, with the understanding that she should be released from any personal liability, but those 216 negotiations were conducted entirely independent of Mr. Kirchoff. I don't know that Mr. Kirchoff was ever aware of the settlement made with Mrs. Diversey, although it was made nearly at the same time that I prepared the deed from him and his wife to the company, but the negotiations were conducted independently.

Q. They were simply simultaneous in point of time?

A. Yes, sir.

Adjourned until October 11th, 1884, at 9.15 a. m.

October 11th, 1884—11 a. m.

Parties met pursuant to adjournment.

Present on behalf of complainant, Mr. Harbert.

Direct examination of Mr. Kendall continued:

Q. Why could not the company make a deed and take back a mortgage from Kirchoff, as agreed?

A. I think I explained that matter in my testimony the other day; that I discovered there was a sheriff's title intervening which would affect any title that the company would acquire under a deed from the Kirchoffs, and that a foreclosure was necessary in order to cut out this intervening incumbrance.

Q. Would not this defect also affect the lien which the company was to receive back from the Kirchoffs?

217 A. It would necessarily.

Q. What was the attitude of the Kirchoffs during the period you have testified to—in fact, during all the time subsequent to the making of the contract—with reference to their willingness and ability to go forward with the contract?

A. Mr. Kirchoff, whenever I talked with him on the subject of his buying back his homestead, always appeared to be anxious to do so, and always claimed that he had the right to do so by virtue of the arrangement entered into with the company.

Q. State whether or not Mr. Kirchoff seemed to regard the retention of the homestead as a matter of more importance than the company, by its agents, seemed to consider it.

A. I do not know that I am able to make a comparison of the degrees of interest felt in the transaction; still, Mr. Kirchoff always displayed a good deal of anxiety for the redemption of his homestead property. I do not recollect that there was any special anxiety on the part of the company to sell it to him, but I know I was frequently urged by Mr. Warfield to have the transaction closed.

Q. In the arrangement between the company and the Kirchoffs the company was to receive its full appraised value, was it not?

A. The understanding, as I recollect, was that the company should receive the value put upon the property by the appraiser agreed upon by both parties, and they agreed upon Mr.
218 James H. Rees. Mr. Warfield suggested the name of Mr.
Rees, and Mr. Kirchoff said that he would be satisfactory to him, and Mr. Rees accordingly appraised the property at the values I have heretofore stated.

Q. State whether or not the company parted with any other consideration for the quitclaim deed which it received from the Kirchoffs than a settlement of the claim under the mortgage and the right to the Kirchoffs to purchase the property at its appraised value, giving them the time to pay for it which you have named.

A. Not that I am aware of.

Q. Had the Kirtchoffs any other real estate that you know of besides that included in the trust deed?

A. They had no other that I could discover.

Q. Did the company, to your knowledge, through any of its officers or agents ever tender to the Kirtchoffs or either of them a deed of the homestead lots and request the payment of the money agreed to be paid and the making and delivery of any lien covering the deferred payments as agreed?

A. No.

Q. Did you ever inform the Kirtchoffs or either of them that the company declined to carry out the agreement concerning the homestead property?

A. Not that I recollect.

Q. You have said that you prepared a deed for the company to execute covering but one lot, and I inquired of you as to why
219 the other lot was not included. Let me refresh your recollection by asking you whether Kirchoff about this time was not endeavoring to sell the other lot to Isham and Prentice or some one through them and whether Kirchoff did not request that the deed to the other lot be temporarily with-eld until it should be determined to whom he would have the deed made.

A. I do not recollect any such request on the part of Mr. Kirchoff. I recollect that an offer had been made by Mr. Isham for the purchase of the Pine-street lot. I was informed of this by Mr. Warfield, and I recollect Mr. Warfield saying that he had some talk with Kirchoff in reference to it. I remember that the offer of Mr. Isham was $3,000 at one time for that lot, but I do not recollect that that matter influenced me in preparing the deed for one lot only, and I do not recollect Mr. Kirchoff making any request of that nature.

Q. State whether or not these propositions of Mr. Isham occurred about this time and whether that might not have been the influencing cause.

A. I do not recollect as — the time of this negotiation with Isham whether it was about that date or not. My impression is that it was a considerable time before them, but I have no definite recollection as to the time of Isham's offer except that it was some time prior to the time I prepared that deed and sent it to the company.

220 Q'n. I believe you said that Mr. Kirchoff was consulted about such offer?

A. I understand from Mr. Warfield that he had talked over the matter with Kirchoff.

Adjourned.

KIRCHOFF
vs.
U. M. INS. CO.

NOVEMBER 14, 1884.

Parties met pursuant to agreement. In the absence of Mr. Harbert, solicitor for plaintiff, Mr. Edward R. Swett, who appeared on behalf of defendants, agreed that Mr. Harbert might make hereafter objections to any of the questions and answers the same as though he had been present and made them upon this examination.

Cross-examination of ROBERT B. KENDALL by Mr. SWETT:

Q. When did the term of your employment by the Union Mutual Life Insurance Company in Chicago commence and when did it cease?

A. I stated in my direct examination that I came here on business with the insurance company in the fall of 1876, and that I finished my labors some time in the winter of 1881.

221 Q. What was the scope of that employment?

A. I was employed as general solicitor and attorney for the company in connection with their business matters in Chicago and other places in the West; chiefly in Chicago, however.

Q. What were your duties in relation to the real estate of the company? How far did your authority extend?

A. Do you mean the real estate owned by the company?

Q. The real estate owned or upon which the company held mortgages.

A. My authority was the same as that of any attorney who had business put into his hands, I suppose. I had charge of the foreclosure of their mortgages especially.

Q. The company had a financial agent here in Chicago, did they not?

A. It had.

Q. Were you authorized, for instance, to make a sale of real estate without referring the matter to the company for their approval?

A. No, sir; I had no such authority as that.

Q. Or to compromise a case pending for the foreclosure of a mortgage without the consent of the company?

A. I never exercised any such authority without referring to the company.

Q. In all such matters, then, did you act under the instructions of the company, either oral or written?

222 A. I acted under either general instructions or what I considered general instructions by virtue of my position in connection with the company and any special instructions that I received from them from time to time. Of course there were always matters of detail that I was authorized to act upon without referring to the company or anybody else or anybody representing the company.

Q. Would those general instructions to which you refer authorize you to compromise a pending foreclosure suit without getting the full value of the foreclosure, or to make a sale of a piece of real estate without consulting the company?

A. No; I do not understand that my authority extended so far as that and I never presumed to exercise it.

Q. Were you in the habit of reporting, either by letter or by written reports, to the company all of the transactions made by you as their attorney?

A. Yes; I was substantially—that is, all the important transactions and a great many of the details of business I reported from time to time so as to keep them posted as to how matters were progressing or stagnating, as the case might be.

Q. How often did you make written reports to the company aside from the letters?

A. During a portion of my administration of that office I was in the habit of making regular monthly reports, I think, for the larger part of the time, perhaps; I don't know when I commenced that system. 223

Q. Were those reports supposed to cover all of the transactions in regard to the various pieces of property belonging to the company or upon which they held mortgages in Chicago?

A. No; they were designed to keep the company advised of what I was doing.

Q. If you had made any important negotiation or agreement in regard to a certain piece of property would the result of that negotiation or agreement have appeared in such report?

A. Most likely it would, unless I accidentally overlooked it.

Q. If it had not appeared in a report would it have appeared in the correspondence with the company?

A. It would be very likely to appear in one or the other or both.

Q. On your direct examination you have testified to an agreement in regard to the property in question. Where was that agreement made and when, as near as you can recollect?

A. I don't know.

Q. Was the agreement made with Mr. Kirchoff by you personally?

A. No; I did not make any agreement with Mr. Kirchoff personally.

Q. You made no agreement whatever in regard to his being allowed to purchase the "homestead" from the company?

A. No.

224 Q. Were you present when such an agreement was made with him?

A. I don't know that I was present when any such agreement was made originally. I was present on several occasions when the matter was referred to in conversation with Kirchoff and Mr. Warfield, and in which conversations I may have taken part, more or less—that is, it was referred to as an agreement that existed. I cannot recollect any particular time or times when I was present except at the time when I went with Mr. Kirchoff, Mr. Warfield, and Mr. Rees to view the property for the purpose of appraising it. At that time I understood that the visit to the property was made pursuant to an understanding arrived at between Warfield and Kirchoff that Kirchoff should have the opportunity of taking this property in the way already stated at its appraised value, and I recollect that after our visit to the property and after Mr. Rees had reported in writing and had given me his report of the values of the different pieces of property I informed Mr. Kirchoff, who called at my office, of the price put upon the property, and he signified at that time his satisfaction with the price and with the arrangement in regard to the purchase of it.

Q. Had foreclosure proceedings been begun at that time?

A. Yes; they had, I think. My recollection is that this appraisal took place shortly after the foreclosure proceedings were commenced, and I think the commencement of the foreclosure
225 proceedings probably stimulated Mr. Kirchoff to come to some understanding. I know the matter had been talked with him off and on before, and I did not know whether any definite result had been arrived at or not. I know it was a matter of frequent conversation.

Q. How much was involved in this loan?

A. The original loan was $60,000; there had been very little paid on it.

Q. Was it a matter upon which the company were anxious and upon which a good deal of correspondence passed between yourself and the company?

A. Well, it was a matter about which they were very much interested, perhaps "anxious" in a certain sense, and I do not recollect as to the amount of correspondence I may have had with the company in reference to it: probably there was considerable.

Q. Did the company authorize this agreement to which you have referred; and, if so, in what way?

A. I don't know.

Q. Have you any memoranda of any kind upon which you make this testimony, or is it merely a matter of memory?

A. I have no memoranda of any kind in my possession, except some notes I made from the foreclosure proceedings from the files in court by which I refreshed my memory a little in regard to the dates of the proceedings in court.

226 Q. Over how long a period did these negotiations extend in reference to the settlement of this loan?

A. I think negotiations were opened with Kirchoff as early as the fall of 1876, soon after I came to Chicago.

Q. Is it not true that Kirchoff was very frequently in your office talking with either yourself or Mr. Warfield about it?

A. No; I don't think he was frequently in the office. I know he came to the office several times, but he was not a frequent visitor; in fact, I think Mr. Warfield used oftener to run after him.

Q. Do you know of your own knowledge of this agreement that Kirchoff should be allowed to redeem the homestead ever having been brought by letter or orally to any officer of the company?

A. I have no recollection now of its having been brought to their knowledge by any letter, except, possibly, in a letter that I wrote at the time I sent a draft of a deed from the company to Mrs. Kirchoff.

Q. Was there originally a proposition made to Kirchoff to extend the loan for a period of years preceding the agreement that you have testified to?

A. Yes; there was such a proposition, and I think it went so far as the preparation of the papers carrying it out; that was the first proposition that was talked over, and I think that contemplated Kirchoff's making new papers to secure the entire indebtedness and giving him a long term of years in which to pay it at a low rate of interest; but that was never carried out, and my understanding was that Kirchoff did not feel able to undertake it and it was dropped. 227

Q. Look at the letter I hand you and state whether that was received by you in due course of mail. (Hands paper to witness.)

A. I cannot say whether that is a letter received by me in due course of mail or not.

Q. Do you know the handwriting?

A. Yes; I recognize the handwriting.

Q. Was the letter written by some one in the employ of the Union Mutual Life Insurance Company?

A. The letter appears to have been written by the stenographer in the company's office in Boston at that time, and it is addressed to me.

Q. Do you remember having received a letter to that effect?

A. Well, not very distinctly. I probably did receive it. I have not a very clear recollection of the matter, though.

Defendant's solicitor introduces said letter in evidence, marked Exhibit A, Kendall's examination. The letter reads as follows:

"UNION MUTUAL LIFE INSURANCE COMPANY,
BOSTON, *Aug. 3d*, 1877.

R. B. Kendall, Esq.

228 DEAR SIR: At a meeting of the finance committee this morning we considered the matter of the Kirchoff loan, and we propose to let him have his own way about it, but get the time reduced to five years, if you can.

The reasons moving the finance committee in this matter are simply these: that they deem this the easiest and quickest way to get title to the property; that if we have to go into court to correct the defect in the title affecting the larger part of the loan it would injure the credit of the Co. a great deal more than to allow this money to remain at five per cent. for so long a time, even if they pay the interest. Certainly if they do not pay the interest we will have perfected title in the easiest way possible for us.

Yours truly,
(Signed) JNO. E. DE WITT, *Pres't.*"

Q. Was there any one besides Kirchoff and wife liable on this $60,000 loan?

A. Mrs. Angela Diversey's name was signed to the note for the $60,000.

Q. Did you ever enter up a judgment against her for the entire amount?

A. I think I did—I know I did.

Q. What relation was Mrs. Diversey to Kirchoff?

A. Mrs. Diversey was, as I understood, the mother of Mrs. Kirchoff.

229 Q. Was not one desire, as expressed by Mr. Kirchoff in making the settlement to which you have testified, giving the quitclaim deed of himself and wife, that his mother-in-law might be released from her obligation?

A. No; I think not. I do not recollect of Mr. Kirchoff ever expressing himself in any such way as that.

Q. Was a settlement ever made with Mrs. Diversey by which she was released from liability; and, if so, what was that settlement?

A. There was a settlement made with Mrs. Diversey in this way: The company allowed her to keep a portion of her land which was included in the trust deed discharged of the incumbrance, and she quitclaimed the remainder of the land to the company in satisfaction of her liability. That was, in brief, the settlement made with Mrs. Diversey.

Q. Did Mr. Kirch*odd* enter into those negotiations in any manner whatever?

A. I don't remember that he did. I think those negotiations were conducted without reference to the Kirchoffs; independently with Mrs. Diversey, through her representatives. I never met her personally.

Q. Look at the book I now hand you, marked as containing letters from August 27th, 1877, to January 2nd, 1878, and especially at the letter on page 121, dated September 18th, 1877, and state in whose handwriting it is and what it appears to be.

230 A. The letter appears to be in my handwriting.

Q. Is that a letter-press copy of an original letter written by you?

A. It is.

Mr. Swett read letter as follows:

"UNION MUTUAL LIFE INSURANCE COMPANY,
SEPTEMBER 18TH, 1877.

Union Mutual Life Ins. Co., Boston, Mass.:

We found so many diverse and adverse interests in the Kirchoff case that it has been impossible to so harmonize them as to effect a settlement on the basis proposed by the president when here. Son-in-law Weckler has advised mother-in-law Diversey not to make herself liable a second time for her son-in-law Kirchoff; hence she declined to do more than sign a $10,000 note, secured by a trust deed on her farm. This did not seem to Mr. Warfield and myself a sufficient inducement to release her from her liability for over $75,000 on the note we now hold, upon which we could enter up a judgment any day which would be a valid lien upon the farm, whether our trust deed is so or not. Mrs. Diversey acts under the advise of Weckler, and Kirchoff has no influence with her whatever.

We had an interview yesterday with Weckler, at which he said that a $10,000 mortgage on the farm and her release from 231 any further liability was their ultimatum; but when I told him that in that case we should enter up judgment against Mrs. Diversey on our note we thought he exhibited some signs of weakening. He began to refer to a suggestion of mine made some time ago for a $15,000 loan on the farm. I think they would give it. I think they are anxious to get Mrs. Diversey released from her liability on the old note, and I suspected from his manner that he did not know until then that we held her judgment note. He told us of some other land she owned, which he said was unencumbered, lying near the farm. After having alluded to the matter of taking judgment against her, we thought it best to clinch the matter by entering it up at once, and I accordingly entered up a judgment against Mrs. Diversey alone for the sum of $75,696.89, principal and interest due, and also for fees and costs, and ordered an execution.

Kirchoff has been through bankruptcy since he gave us that note, and, although he has not got his discharge, I see from an examination of the case that his discharge was applied for long ago, and that the register reported in favor of it, and there was no opposition. It would therefore seem that he can get it any day. He is probably unwilling to settle the costs. At the time the note was signed Mrs. Kirchoff had no capacity to make a contract except as to her separate estate on account of her coverture, and I do not

think a judgment *vs.* her would hold. Married women were
232 at that time in this State still under the common-law disabilities as to making contracts (except as I have mentioned). Her trust deed executed with her husband would probably be good, but her note, not being a contract relative to her separate estate, would not be worth a cent. Therefore I thought it best to take judgment against the widow Diversey alone. I think it very likely that the parties will now come to time upon almost any reasonable basis I infer so chiefly from Weckler's manner when I mentioned the judgment to him yesterday. At any rate we have a pretty solid lien upon the farm and upon any other real estate of Mrs. Diversey.

Very respectfully, etc., ROBERT B. KENDALL."

Q. Now, up to that time had there been any such agreement made for the quitclaiming by Kirchoff and wife of this entire property embraced in the trust deed and for their redeeming the homestead, as you have testified to?

A. I think not at that time. The matters alluded to in this letter relate to the negotiations that I have before mentioned for the giving of new mortgage papers for the entire indebtedness.

Q. Look at the report I now hand you, dated November 25th, 1878, and state what it is.

A. This is one of my monthly reports rendered to the company.

233 Q. Look at the next to the last page of this report, commence with the last paragraph, and read the remaining portion of the report.

A. (Witness reads:) "I have had several interviews with Kirchoff relative to loan No. 682, hoping that we might effect a settlement of the matter without the delay of a chancery foreclosure. He would like to redeem his homestead and the adjoining lot and also the Diversey farm and surrender the rest; but Mrs. Diversey, his mother-in-law, who owns the farm, is under the influence of another son-in-law, Weckler, who is somewhat hostile to Kirchoff and I think advises the old lady not to agree to it. I think Mr. Kirchoff would give you $25,000, long time, at four per cent., with ten per cent. of principal annually, for the homestead and farm; the first valued at $10,000 (two lots) by Rees and the farm at $20,000 by Rees, which Mr. Warfield thinks is too high. He offers $20,000, but I have told him I won't forward an offer for less than $25,000, and would not assure him of the acceptance of even that. This arrangement has in view the releasing of an old trust deed prior to ours, of which you are informed, and the correction of the description in deed of the farm and deed of all the other property covered by the trust deed on their part and cancellation of the indebtedness and of the judgment against Mrs. Diversey on our part. What would be the views of the company in this regard, providing it can be done?"

234 Q. In whose handwriting is what you have read?

A. In my handwriting.

Q. Had any agreement such as you have testified to been made at the date of this report?

A. Well, so far as I have any knowledge of the agreement referred to in reference to the homestead property, so called, the two lots—I think it had been agreed upon before this date—that is, the redemption of the homestead lots for the appraised value placed on them—because I am very sure that it was prior to this date that the appraisement was made at the time I visited the property with the other gentlemen.

Q. Look at the book I now hand you, marked June 29th, '78, to April 25th, '79, and especially at a letter dated January 1st, '79, found on page 443, and state what it purports to be. (Hands same to witness.)

A. This is a letter-press copy of a letter written by me to the Union Mutual Life Insurance Company, dated January 1st, 1879, and is in my handwriting.

Q. There are some portions of this letter that do not refer to the property in question. I will ask you to read, commencing with the paragraph at about the middle of page 444, which is a part of this letter.

A. (Witness reads:) "There has not been much delay in the Kirchoff case, except that Mr. Barber, counsel for Diversey, was running for Congress, and I was obliged as a matter of courtesy 235 to grant him a little extra time in which to prepare and file his answer; that, however, has been done, and the case is at issue and will be referred to a master to take proofs and report. (Witness says that the next few words are illegible.) If the case then develops great difficulty, I will retain Mr. Sleeper, but *it* in its present state it seems unnecessary. I had hopes of effecting an amicable settlement and avoid litigation, but have not got such terms from Diversey as to care to submit them. The son-in-law of Mrs. Diversey, Weckler, says that it is with her a question of saving something from the property she pledged for Kirchoff's debt, and that if we are not willing to concede anything she will fight for what she can get. I think now that an offer on our part to let her keep forty acres of that farm would induce her to give us a deed of the rest, although she has not said so. Weckler, with whom I have had several interviews during the last month, offered on her behalf to divide the farm, which contains 130 acres. You are, I think, sufficiently informed of the various complications in this matter, so that I need not state them fully. I explained them fully to Mr. Sharp and have written fully to the company. I think we can maintain our case in court, but we may have a long — (witness states that the next word is illegible) of it. Kirchoff would willingly surrender all his property and make an arrangement to buy back his homestead at a liberal price, but I do not dare to settle with him 236 without settling the whole case, as it might prejudice our claim against Diversey. It — (witness says next word is illegible) rather unfortunate now that we released part of the security without adequate consideration, thus leaving more than a fair proportion to be satisfied out of the remainder, and we cannot safely take Kirchoff's property for a certain part of the debt and then hold Mrs. Diversey for the bal.; it would give cause for complaint on her part, and our idea of the relative value of the different parcels of land might not be sustained by the court —. (Witness says next word is illegible.) A receiver of the property has been appointed and the rents will be collected by him. Kirchoff has taken a lease of his house from the receiver. I wrote in my report for November about this case, and the matter was referred to the vice-president, then here, but he did not appear to favor a settlement involving concessions — (witness says next word is illegible) on our part. Of course, any settlement would involve some concessions on both sides. If it is not thought advisable to negotiate, I will give no further thought to the subject, but will push the court proceedings as fast as may be, but I would like an expression — (witness says the following is illegible) of your views in the matter." That appears to be all of the letter relating to the Kirchoff business.

Q. Had the agreement with Kirchoff to allow him to buy back the homestead been made at the writing of the letter which you have just read?

237 A. Well, so far as I know anything about the agreement, it had been made previous to that date—that is, the understanding between the company and Kirchoff to the effect that he could have his homestead property at such a price. The way in which the matter should be settled up so that could be brought about and completed does not appear to have been settled upon, but was still a matter for discussion and consideration.

Q. There had been at this time no completed agreement, although there may have been conversation in regard to an agreement?

A. My understanding was that it had been agreed that Mr. Kirchoff or Mrs. Kirchoff should in some way redeem their homestead upon paying the appraised value.

Q. About when was this appraisal made, as near as you can remember?

A. As near as I can recollect, the appraisal was made in July or August, 1878.

Q. Look at the letter I now hand you, dated January 8th, 1879, and state what it purports to be. (Hands paper to witness.)

A. This purports to be a letter in the handwriting of Daniel Sharp, who was at that time vice-president of the Union Mutual Life Insurance Company, bears date the 8th of January, 1879, is addressed to me, and is in the handwriting of Mr. Sharp.

Q. I will ask you whether this letter is in reply to the one you have just read.

238 A. This letter commences with the words, "Your favor of the 1st inst., responding to ours of 20th Dec., duly received."

Q. The first paragraph of this letter evidently refers to another case. Will you read such portions of the letter as refer to the property in question?

A. Omitting the first paragraph of the letter, which refers to another matter, after acknowledging receipt of my letter of the 1st, the letter goes on to say as follows:

"In the matter of the Kirchoff case, if a settlement can be made which shall include Mrs. Diversey's suit and complications of every name and nature and attending costs by Mrs. Diversey retaining the forty acres the other side of the railroad trac*t* (*sic*), as shown by you to the writer, with all needful quitclaim deeds from parties in interest, so that our title will be unquestioned to the whole property which we shall then hold, we will consent to let her keep the forty acres rather than prolong the case in court. If, however, she declines, we wish you to push the matter, as before advised

Yours truly, DAVID SHARP, *V. Pres.*"

There is a memorandum on the margin of this letter in my handwriting, saying, "Ans'd Jan. 14,'79."

Q. Look at the letter book I now hand you, marked June 29th, '78, to April 25th, '79, on page 483, and state what it purports to show.

A. This is a letter-press copy of a letter in my handwriting, addressed to the Union Mutual Life Insurance Company, dated 239 January 14th, 1879. A portion of the letter refers to the Kirchoff business, and appears to be a reply to the letter I have just read from.

Q. Will you please read such portions of that letter as pertain to the Kirchoff loan?

A. (Witness reads as follows:)

"I have Vice-Presidents Sharp's favor of the 8th instant, and in reply—

In regard to settlement of the Kirchoff case, do I understand the vice-president to refer to the suit now pending in the Supreme Court, this case, Johnson *vs.* Diversey, when he speaks of Mrs. Diversey's suit? If so, I have to say that a settlement such as suggested cannot be made to cover that case, although it would cover everything else. We cannot make Johnson a party to our settlement. That suit, however, does not affect the title to the Diversey farm, which was the separate property of Mrs. Diversey, but does affect the title to all the other land in the trust deed, which was Mrs. Diversey's, the suit being against his administrator. There is a large amount of other property affected by that suit. Mrs. Kirchoff's share was one-fourth, I believe. If the suit is finally decided in favor of the plaintiff, the claim becomes a lien upon the whole estate.

Very respectfully, etc., ROBERT B. KENDALL."

12.50 p. m.—Adjourned until 2 p. m. this day.

240 NOVEMBER 14TH, 1884—2.30 p. m.

Parties met pursuant to adjournment.

Cross-examination of Mr. KENDALL conti-ued:

Q. Look at the report I now hand you, dated June 30th, 1879, on page 7 of the same, and state what it purports to be.

A. I find in this report made by me to the company of that date an entry relative to the Kirchoff-Diversey loan, in which it says, "June 9th, prepared quitclaim deed from Angela Diversey to the company of certain premises described here; prepared release deed from L. B. Boone to Angela Diversey of certain premises described; prepared quitclaim deed from Julius Kirchoff and Elizabeth Kirchoff to the company of all other land not released described in trust deed No. 682, both deeds of quitclaim made in satisfaction of indebtedness."

Q. Do you find anything in that report in relation to the agreement testified to for the redemption of the Kirchoff homestead?

A. No; I find no reference to it.

Q. Look at the report I now hand you, dated September 30th, 1879, more particularly on page 2 of the same, and state what it purports to be.

A. I find in this report made by myself of that date to the company certain entries showing that on the 11th of September, '79, I received from Angela Diversey deed of a portion of her land described in the trust deed held as security for the loan; that I delivered to Mrs. Diversey a release deed from Dr. Boone of a portion of her land covered by the trust deed; that I had received from Julius Kirchoff and wife a quitclaim deed of all the remainder of the lots in trust deed No. 682, and that on the 12th of September I had recorded the warranty deed from Angela Diversey to the company. 241

Q. Do you find anything in that report about an agreement to redeem the homestead?

A. I do not see any reference to it here.

Q. Look at the letter book I now hand you, marked April 26th, '79, to February 28th, 1880, and especially on page 412, and state what it purports to be.

A. This is a press copy of a letter written by me to the insurance company, dated November 1st, 1879.

Q. Is it in your handwriting?

A. It is in my handwriting.

Q. Will you please read that letter?

A. (Witness reads:)

"CHICAGO, ILL., *November 1st*, 1879.

Union Mutual Life Insurance Company:

Among the lot of deeds forwarded from this office today for execution by the company is one to Kirchoff of his homestead lot, so called, which bears even date with the quitclaim deed given by Kirchoff and wife to the company. There was an understanding between Mr. Warfield, Kirchoff, and myself that the 242

company would sell this lot back to him and allow him to pay for it in installments; but so far as I know the price was not definitely fixed. The consideration named in the deed I have prepared is the appraised value by Rees at the time he visited all the Kirchoff property, over a year ago. If the company approve of selling to him at that price, please execute and return the deed and name terms of payment. Kirchoff has expressed a preference for semi-annual payments ac. principal, but has always objected to paying anything down in cash, and I have always told him that the company would not like to sell without a payment in cash on delivery of the deed, so that is an open question as well as the price. He has never been near me since he delivered the quitclaim deed; but Mr. Warfield says that he claims now that he was to have the privilege of buying back lot 4 also (Pine St.); but such has not been assented to by me in any way, for I have thought that the redemption of his house and lot was as much as he ought to undertake. In all my conversations with Kirchoff I have avoided fixing the price, but have told him what Reese's valuation was and said I would advise the company, to reconvey at that price, and I do so advise accordingly. In the first instance he said he would be willing, in order to
243 make a settlement and get rid of his obligation to the company, to undertake the redemption of his homestead at even more than it was worth. He now wants to include the lot on Pine street, making the total consideration $10,000. (So says E. A. W.) I don't think we are — (witness says next word is illegible) any obligation as to lot 4, even morally; and, as I understand it, we are under no obligation whatever as to his homestead except to give him a chance to buy it back on such terms as the company are offering other property—that is, long-time installments, low rate of interest. I don't believe he will pay any cash down, but think he will undertake to make a payment of $\frac{1}{20}$ on the first of April next. I would suggest making him such terms, with interest from date of deed, and then have him either accept or decline, and end it.

Very respectfully, ROBERT B. KENDALL."

In the margin is written: Lot 4 is in demand, and Kirchoff knows there is money in it at the appraised value or at the offer made by Isham some time ago ($3,000).

Q. That letter was sent by you to the insurance company, was it?

A. It was.

Q. Look at the letter I now hand you, dated November 5th, 1879, and state whether it purports to be an answer to the letter just read.

244 A. This is a letter which purports to be in reply to the letter I have just; it is dated November 5th, 1879.

Q. By whom is it signed?

A. John E. De Witt, president.

Q. Do you know his handwriting?

A. Yes; I do.

Q. Is that his signature?

A. Yes; it is.

Q. Will you please read that?

A. (Witness read:)

BOSTON, *November* 5, 1879.

Robert B. Kendall, Esq., Chicago, Ill.

DEAR SIR: Your favor of the 1st is at hand and submitted to our finance committee yesterday at their regular meeting. They declined to sell the property mentioned to Mr. Kirchoff or anybody else for $7,000. They will at any time within the next 30 days sell to Mrs. Kirchoff on the following terms and conditions: For $8,400, one-quarter cash, balance to be paid in 20 equal semi-annual payments, interest at six per cent. per annum.

The committee feel, in dealing with a man who has so little regard for his promise to pay, together with the fact that there is a 245 15 mos.' equity of redemption in your State—they feel that they must have a considerable margin of the amount down. They would not sell to anybody without a payment down. They would not sell the other lot to Mr. or Mrs. Kirchoff except for cash and at a price to be named, if they want it.

Yours truly, JOHN E. DE WITT, *Pres't.*

Q. Look at the book marked April 26th, '79, to February 28th, '80, at page 440, and state what it purports to show. (Hands same to witness.)

A. This appears to be a press copy of a letter in my handwriting addressed to the insurance company, dated November 8th, 1879, in reply to the letter I have just read.

Q. Please read the letter.

A. The letter is as follows:

"CHICAGO, ILL., *Nov. 8th,* 1879.

Union Mutual Life Ins. Co., Boston, Mass.:

I have the president's favor of the 5th relative to the draft of deed sent by me to the company on the 21st ult. for conveyance of Kirchoff homestead lot to Mrs. Kirchoff for $7,000, etc. I have communicated the company's decision to Kirchoff. Perhaps the finance committee did well to disregard my advice. I don't think Kirchoff will purchase, but perhaps he will.

Very truly, ROBERT B. KENDALL."

246 Q. Did you communicate the decision of the company to Mr. Kirchoff?

A. I don't recollect whether I did or not. I don't think that I communicated it in writing, but whether I saw Kirchoff in regard to it or not I don't recollect now.

Q. Did Kirchoff ever express himself to you as willing to accept the offer of the company made in their letter to you of November 5th, 1879?

A. No; not that I recollect.

Q. Look at the report I now hand you, dated December 31st, 1879, and state whether it is one of your monthly reports to the company.

A. This appears to be one of the monthly reports.

Q. Is it signed by you?

A. It is signed by me.

Q. Look on page 3 of this report and read the first paragraph.

A. The first paragraph on page 3 of this report, under the title "Kirchoff," reads:

"November 8th. Filed for record deed from Kirchoff and wife to company. Received a letter from company in reply to mine of 31st October saying finance committee decline to sell Kirchoff his homestead for $7,000, but will sell for $8,400, one-quarter cash, balance in 20 equal payments, 6 per cent. interest.

247 November 17th. Received letter from company saying this matter must be fixed up before the end of the year.

December 1. Sent company a quitclaim deed from Kirchoff and wife to company."

Q. Look at the quitclaim deed I now hand you and state whether it is the deed executed by Kirchoff and wife to which you have referred in your testimony. (Hands same to witness.)

A. This is the deed from Kirchoff and wife to the insurance company to which reference has been made in my testimony.

Said deed offered in evidence by defendant's solicitor, marked Exhibit D, Kendall's testimony. It reads as follows:

This indenture witnesseth, that the grantors, Julius Kirchoff and Elizabeth Kirchoff, his wife, one of the heirs of Michael Diversey deceased of the city of Chicago, in the county of Cook and State of Illinois for the consideration of one dollar and other valuable considerations convey and quitclaim to the Union Mutual Life Insurance Company a corporation created and existing under and by virtue of the laws of the State of Maine, all the following-described real estate situate in said county of Cook, to wit, lot one (1) two (2) three (3) ten (10) eleven (11) and twelve (12), in block four (4) in Knoke and Gardner's subdivision of twenty (20) acres north and adjoining the south thirty (30) acres of the west half of the
248 northwest quarter of section number twenty-eight (28), township forty (40) north range fourteen (14) east of the third principal meridian. Also lot number twenty-six (26) in O. J. Rose's subdivision of the east half of block twenty-eight (28) in the canal trustees' subdivision of west part of section five (5), township thirty-nine (39) north, range fourteen (14) east of the third principal meridian. Also lot ten (10) in block sixty-four (64) original town of Chicago, with the three-story brick building situate thereon. Also block twelve (12) and the east three and one-tenth (3.1) acres of block three (3) on William Lill and heirs of Michael Diversey's division of the southwest half of the northwest quarter of section twenty-nine (29) township forty (40), north range fourteen (14), east of third principal meridian. Also lot three (3) in the subdivision of the northeast corner of block fifty-three (53) in Kinzie's addition to Chicago. Also lots numbers two (2) and four (4) in block numbered twenty-one (21) in the canal trustees' subdivision of the south fraction of section three (3), township thirty-nine (39), north

range fourteen east of the third principal meridian, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of said State of Illinois.

This conveyance is given and accepted in satisfaction of certain indebtedness of the said Julius Kirchoff and Elizabeth Kirchoff, secured by a trust deed on said premises given by the said
249 Julius Kirchoff and Elizabeth Kirchoff his wife and Angela
Diversey to Levi D. Boone, trustee, dated the 8th day of May in the year eighteen hundred and seventy-one, and recorded in the recorder's office for the said county of Cook in Book 649 of Deeds, page 131.

Dated this fourth (4th) day of September, in the year eighteen hundred and seventy-nine.

JULIUS KIRCHOFF. [SEAL.]
ELIZABETH KIRCHOFF. [SEAL.]

To which is annexed the certificate of acknowledgement by Julius Kirchoff and Elizabeth Kirchoff before Harry Rubens, notary public, dated Sept. 5, 1879, and recorder's certificate that said deed was filed for record November 8, 1879, and duly recorded.

Q. Look at the letter book I now hand you, marked April 26th, '79, to February 28th, '80, on page 461, and state what it purports to be.

A. This is a press copy of letter signed by me, addressed to the Union Mutual Life Insurance Company, dated November 17th, 1879.

Q. Will you please read such portions of it as refer to the Kirchoff loan?

A. This purports to be in reply to the president's letter of the 14th of the same month, and contains the following reference to the Kirchoff matter, viz: "In reply to president's third favor
250 of same date, relative to Kirchoff and Maher cases, I have to
say that the deed from Kirchoff and wife to the company has been recorded and will be forwarded as soon as received from record. I expect to give this case all the additional 'fixing up' that it requires, and to be able to report the same as completed before the 1st of January."

Q. Do you remember when proceedings were commenced in the United States court to foreclose the Kirchoff trust deed?

A. I do.

Q. At about what date?

A. I think it was on or about the 11th of July, 1878; I think I fixed the date in my examination-in-chief from mem-randa which I had then, but have not with me now.

Q. Were you pressing these foreclosure proceedings from that time until the final sale of the premises under decree?

A. I was conducting the foreclosure proceedings on behalf of the insurance company.

Q. You have testified to appraisals made of the property covered by this trust deed. At the time Kirchoffs executed the quitclaim deed to the company was the property covered by the trust deed considered by yourself and the other officers and agents of the company as worth the claim the company had against the property?

A. I don't think it was—that is, I don't think I considered at
that time that the property would sell for the amount of
251 the debt, and when the appraisal was made by Mr. Reese, in
the summer of '78, his valuation was considerably below the
amount of the indebtedness.

Q. Could you as the attorney of the company have taken a deficiency decree against the Kirchoffs for the difference between what the property sold for under the decree of the court and the claim under the trust deed?

A. I could.

Q. Do you remember when Warfield was appointed receiver of the property covered by the trust deed, including the homestead property?

A. Yes; I recollect about when he was appointed; I think it was in September, '78.

Q. Was it prior to the execution of the quitclaim deed to the company?

A. It was; it was a year, at least, prior to the execution of the quitclaim deed.

Q. Did the Kirchoffs execute a lease to Warfield?

A. I understand they took a lease from Warfield as receiver of the homestead.

Q. Do you know whether there was any clause in that lease referring to any agreement to redeem the homestead?

A. I don't know; I don't know that I ever saw the lease; I understood there was a lease given.

252 Q. Did you ever receive instructions from the insurance
company to eject Kirchoff from the premises on account of
the non-payment of rent?

A. I don't recollect receiving any special instructions from the company on that subject.

Q. Look at the report I hand you, dated May 31st, 1880, and state what it purports to be.

A. This is a report, dated May 31st, 1880, signed by me. It appears to be one of my regular monthly reports, and on the first page, under the title "Kirchoff," I report to the company that on the 28th of May of that year I received a letter from Mr. Warfield, as receiver, saying he was unable to collect rents now due from premises occupied by Kirchoff, and requesting that measures be taken to eject him, and I shall make application to the court for assistance in this matter as soon as the national convention is over, the court having adjourned during the meantime.

Q. Will you look at the letter book I now hand you, marked "Kendall & Bliss;" also "9 K," on page 25, and state what you find?

A. This is a press copy of a letter written and signed by me, addressed to the Union Mutual Life Insurance Company, dated November 2nd, 1880.

Q. Will you read that letter, omitting therefrom a tabulated statement of the disbursements?

253 A. The letter is as follows:

"I submit the following statement of the Kirchoff case in the matter of the sale under decree of foreclosure: Decree entered August 30, '80, for $91,358.16." Then follows a statement of interest and costs and giving a statement of the amount bid at the sales and a statement of the deficiency. Then follows: "Herewith please find certificates of sale as follows:" Then there is a tabulated list of the certificates of sale issued by the master in chancery, in which it appears that lot two, block twenty-one, being the homestead property referred to, was bid in by the company for $9,000, and lot four of the same subdivision, being the Pine-street lot, so called, for $8,000. Then the letter reads as follows:

"It seemed to be the best to bid in these pieces of property for about enough to satisfy the decree and costs, partly because a deficiency decree would be worthless, and it was also understood between the parties to the suit, Kirchoff and wife and Mrs. Diversey, that in consideration of their quitclaim deeds no deficiency decree should be taken, and partly because it might enable the company to sell the property before the master's deed will be issued in January, 1882. Holding, as you now do, the deed of Kerchoff and wife and certificates of sale for probably, in most cases, much more than
the market value of the property, so that a purchaser, being
254 the assignee of the certificate for a sum much less than its
face, would have no fear of redemption by any creditor, it seems now that the property might all be put into the market. This policy in regard to the bids has, of course, added a few hundred dollars to the expense of foreclosure; perhaps two hundred dollars; but on such a large amount of property that will not weigh against the advantage to be derived from holding it at high figures." That appears to be all that relates to the matter of the foreclosure proceedings.

Q. Look at the report I now hand you, dated January 3rd, 1881, and state what it appears to be.

A. This is a report signed "Kendall & Bliss, att'ys," addressed to the Union Mutual Life Insurance Company, dated January 3rd, 1881, and is in my handwriting.

Q. Please read from that report such parts as refer to the matters in controversy in regard to this loan.

A. There seem to be three pages here relative to the various phases of the Kirchoff business. On page 3 the report reads, among other things: "Since our last report all of the Kirchoff property has been sold under foreclosure decree and bid in for the company, the particulars of which sale, etc., were duly reported by letter at the time and the fifteen certificates of sale forwarded. Kirchoff himself still remains in possession of the lot on the corner of Rush and Pearson streets, and Mr. Gallery, who was appointed receiver in
place of Mr. Warfield, has not been able to collect much rent
255 from him, although he gets plenty of promises, and *syas* he
got one cigar the other day. We can, of course, make out a

case of forcible detainer against Kirchoff and eject him at the end of a lawsuit, but the premises don't seem very valuable for rent to any one else, and we have been hoping Kirchoff would get his business going, so as to pay up. It looks rather dubious, however, and if the company prefer we will go for him."

Q. Do the letters and reports that you have read show correctly the proceedings that were had in regard to the foreclosure of the trust deed to the company, and also the settlement with the Kirchoffs?

A. I don't know. What statements have been read from my reports are substantially correct so far as they show the transactions.

Q. Would they not be more likely to give a correct statement of the negotiations as they occurred than you could give from memory at this day, they being written down at the time?

A. I should say that the chances were that they would be more likely to be absolutely correct, so far as dates and event were concerned.

Q. Is it not possible that from the long lapse of time there may have been a confusion in your mind as to what really did 256 occur, and that the agreement to which you have testified in relation to the redemption of the homestead may have been merely in the form of negotiations and never have come to a final settlement?

A. Well, I didn't make the agreement, and I have not testified to having made the agreement myself. What I know about it was chiefly derived from my conversations with Warfield and Kirchoff, the way the matter was treated in my presence by them as a settled thing, so far as the terms on which the redemption or repurchase, whatever you may call it, were to be made. I, as attorney for the company at the time and acting in their interest, never favored this project of Kirchoff buying back or redeeming those lots, because I had serious doubts about his ability to carry out any such agreement and did not have much faith in it.

Q. Did he ever express himself as ready and prepared to carry out the agreement as understood by him?

A. Yes; I think he has proposed to me at times his readiness to carry out the agreements. My recollection is that he referred to it when I met him a good many times. I think I treated the matter rather slightingly, because I did not feel much interest in it and never thought it was particularly good business for the company, and always doubted Kerchoff's ability to carry it through.

Q. During all this time were you able to collect rent from him?

257 A. I never made any effort to collect any rent from him. I understood the receiver collected some rent from him—a little, but not much—and was unable to collect from him.

Q. Did he ever make a tender of any money for the purpose of carrying out this agreement?

A. Not to my knowledge; he never made any tender to me.

(Adjourned.)

It is stipulated that the letters and extracts from reports and the deed read by witness may be considered in evidence, and that the master need not attach to this deposition said original papers.

The defendant agrees to produce said letters and reports and deed for the inspection of the counsel for complainant, and will produce them upon the trial of the case if desired.

—— ——,
Solicitor for Complainant.

—— ——,
Solicitor for Defendant.

KIRCHOFF
vs.
U. M. INS. CO. OF MAINE.

JANUARY 22ND, 1885—2 o'clock p. m.

Parties met pursuant to agreement.

Present: On behalf of plaintiff, Mr. W. S. Harbert; on behalf of defendants, Mr. Edward Swett.

258 Redirect examination of ROBERT B. KENDALL.

By Mr. HARBERT:

Q. Referring to the early part of your cross-examination, in which you testify concerning your employment and authority as attorney, please state to what extent, in the absence of express instructions from the company, you and Mr. Warfield attended to the current and general business of the company.

A. We acted under our general authority and instructions in carrying out what was understood to be the general policy and wishes of the company in regard to the transaction and settlement of their business in connection with the various loans in Chicago and the real estate acquired by them.

Q. What was the scope of Mr. Warfield's employment and work?

A. The general scope of his authority and work was the collection of the interest and principal of the loans coming due from time to time to the company, the negotiation of terms of settlement with delinquent borrowers, either by taking their property in satisfaction of their indebtedness or making terms upon which they could redeem or carry their loans, making the burden a little lighter where it was necessary, and generally to get all he could for the company, and also his business was to sell and dispose of the property that came into the company's hands under the various mortgages, negotiate sales under the general and special instructions received from time to time, carrying out a general policy as understood on 259 the part of the company, to dispose of their real estate as fast as he could without any greater sacrifice than was necessary. It was generally understood that the company would sell any of their real estate at appraised value and upon easy terms of payment and low rates of interest to induce parties to purchase, times being very dull then and the company acquiring a good deal more real estate than they wanted to carry here. Mr. Warfield acted under general instructions to that effect, which were, of course, modified from time to time by special instructions in particular cases received from the company, but generally, so far as he made sales of property upon those terms of payment, they were ratified and approved of by the finance committee of the company as a matter of course.

Q. What were the terms upon which it was understood sales were to be made as — of course?

A. Well, the general rule was that they would sell upon the payment of a small proportion of the purchase-money down; one-tenth was the rule. In such cases where he could readily make better terms he was expected to do so, but it was always understood that the company were ready and willing to dispose of their property upon payment of one-tenth cash and distribute the rest over a term of five or ten years, ten years in many cases, with an annual or semi-annual payment of principal and low rate of interest.

260 Q. Had the company on hand at about the time of this Kirchoff transaction any considerable amount of property?

A. Yes; they must have had a very large amount of property on their hands here.

Q. Had any of this property been purchased or was it all or nearly all taken in payment of loans?

A. Oh, it was substantially all acquired by foreclosure of trust deeds, mortgages, or by the surrender of property on the part of the borrowers.

Q. When debtors surrendered their property on a compromise had you any custom with regard to the deeds expressing the fact that the property was taken in payment of indebtedness or the like?

A. It was my rule to insert in every deed to the company a claim to the effect that it was taken for the indebtedness that had been secured by it.

Q. Was there any special reason why this was done?

A. Yes. I had this reason: That it was a matter of doubt, to say the least, whether the company, being a foreign corporation, had any right to acquire the title to real estate in Illinois by purchase except in satisfaction of indebtedness, and I always put that clause in so that the deed would show itself that it was not an out-and-out purchase on the part of the company, but that it was taken in satisfaction of a debt, sometimes in lieu of a foreclosure and some-
261 times as a supplemental proceeding to a foreclosure; but the
object in inserting that clause was to avoid any question as to the right of the corporation to acquire a title to land.

Defendant's counsel objects to so much of the above answers as does not appear to be of the witness'es own knowledge; and, further, as to that part of them referring to the scope of the authority of Mr. Warfield, it not appearing but that his appointment was in writing and the witness not stating the source of his information.

Q. I call your attention to the clause inserted in the deed from Kirchoff and wife to the company reading, "This conveyance is given and accepted in satisfaction of certain indebtedness," etc. Is the foregoing about the style and substance of the clauses to which you have referred as being inserted for the purpose of showing that the conveyances were not in pursuance of a purchase?

Objected to as immaterial.

A. Yes; it is substantially, and I think actually, the form and phraseology that I had adopted and made use of in such deeds.

Q. Then, as I understand you, these clauses were inserted for the benefit of the examiner of the title and not as expressing necessarily the consideration for the deed?

A. Yes; that was the purpose of inserting that clause.

Q. And was that true in this case as in others?

262 A. Yes; it was.

Question and answer objected to as incompetent.

Q. When did you first have knowledge of the agreement between the company and Mr. Kirchoff with reference to the purchase or redemption of his homestead at the proposed value put upon the property by Mr. Reese?

A. I do not know that I can state exactly. It was about the time the foreclosure proceedings were commenced, but I understood through Warfield and Kirchoff that such an agreement had been made with Kirchoff. I know that he expressed a desire to do so, and I know Mr. Warfield had given him some sort of assurances that the company would consent or would allow him to redeem his property in that way. Just when I first heard of the agreement being made I do not definitely remember.

Answer objected to.

A. (continued). I think it was about the time that I went around, as I before testified, I think, with Warfield and Kirchoff and Mr. Reese to view the property.

Defendant's counsel objects to the witness's statement of what he understood as not being within his own knowledge.

Q. You may state from whom you understood as to the agreement being made.

A. I understood from conversations I had with Warfield and with Kirchoff.

263 Q. When you went out with Mr. Reese to make this appraisement who went with you?

A. Mr. Kirchoff, Mr. Warfield, Mr. Reese.

Q. Do you know who hired the team on that occasion?

A. Mr. Kirchoff furnished the team—a carriage and a pair of horses and a driver—a good deal of style about it. I recollect he came around to the front of our office on La Salle St. and took us all in, and we went around and spent a half a day, I guess, driving around to see different pieces of property.

Q. And Mr. Kirchoff footed the bill?

A. I understood that he did. I recollect this about it, that we visited all the property on the West and North Sides, and finally went to Mr. Kirchoff's residence, on the corner of Rush and Piersons Sts., the last thing. We got out and Mr. Kirchoff invited us in and opened a bottle of champaign. He seemed to have had it all ready.

Q. Was this agreement fully talked over at that time?

A. Yes; it was the subject of general conversation. The expedition was organized with this object in view, as I understood at the time, to fix a price on the property at which Kirchoff could redeem it from the mortgage or with a view to his redeeming it. That is the way I understood it at the time.

Q. Had you been consulted at this time with reference to whether
a conveyance from the Kirchoffs would perfect the title in
264 the company and enable them to reconvey to the Kirchoffs
upon the terms proposed?

A. I do not recollect that I had been consulted at that time upon that subject. I know the matter was a subject of conversation at some time; but the matter of these judgments that were outstanding of record, as appeared by the abstracts, against Mrs. Kirchoff were spoken of by me as standing in the way of acquiring title and closing the matter by quitclaim deed, and I know then Mr. Kirchoff said that those judgments were all settled as a matter of fact, although they appeared outstanding on the record, and I afterwards ascertained that that was the fact; but just when that was discussed I do not recollect; some time during the time we were talking of settling up in that way.

Q. Referring to the letter of August 3rd, 1877, in your cross-examination, please state to what the same refers.

A. This letter refers to certain negotiations that had been going on with Kirchoff relative to funding the entire loan and making a new set of mortgage papers and extending the time for the payment of it and making some modification of the rate of interest, reducing it.

Q. Please look at the book now shown you and state what the same purports to be (handing book to witness).

A. It purports to be letters from May 16th, 1877, to August 25th, 1877—a letter-press copy book containing letters from Mr. Warfield and myself addressed to the Union Mutual Insurance Company during that time.

265 Q. Please look at the pages now shown you and state what
they are.

A. On page 322 there is a press copy of a letter in my handwriting, dated July 5th, 1877, signed by me and addressed to the Union Mutual Life Insurance Company, and on page 433 there is a letter dated July 23, 1877, addressed to the insurance company, signed by Mr. Warfield.

Q. Please read said letters and state to what they refer, and explain the same.

A. The first letter referred to is written with reference to negotiations then pending for the making of new papers for the entire indebtedness of this Kirchoff loan and contains suggestions as to the way in which it might be done. It reads as follows:

"I have had search made for judgments against Kirchoff and wife and mother-in-law, Diversey, with the following result: The total amount of judgments against Julius Kirchoff, $11,015.80; total amount of judgments against Elizabeth Kirchoff, $1,952.14. Of the last amount it appears from the records of the recorder's office that $1,583 has been satisfied, although the judgment docket does not show it, which leaves only $369.14. There are no judgments against Mrs. Diversey, who owned the farm at the time our trust deed was made and who is supposed to own it now. The title to most of the property was in Elizabeth Kirchoff when the trust deed was given.
The total valuation of all the property by Morey was $76,480,
266 and of this amount lots standing in the name of Julius Kirchoff
make up the sum of $10,000. If upon examination no more serious objection to making new papers appears than the judgments against Mrs. Kirchoff they need not stand in the way of making a new deal. The Kirchoffs could probably satisfy the judgments; but even if we were to take title subject to these small amounts, it might be better than the present state of affairs. I hope Kirchoff will get up the abstracts, and if punching up will make him do so I'll see him well punched. It will not be practicable to make new papers to convey the lots standing in the name of Julius Kirchoff on account of the judgments—and probably he don't own them. It will not take long, I think, to have an abstract made of the title to the farm, and it probably will not be very expensive.

Yours truly, ROBERT B. KENDALL."

The letter from Mr. Warfield reads as follows:

"Referring to loan 682, Kirchoff, will say that Mr. Kirchoff now says he did not understand the president to say that any portion of the principal was to be paid during the ten years. He says the agreement with the president was to execute new papers at five per cent. interest, giving Mr. Kirchoff ten years to pay the principal; says he cannot make partial payments. Shall we execute the papers in accordance with what Mr. Kirchoff says was his understanding? I understand the agreement to be for Kirchoff to pay five per cent.
of the principal with each semi-annual payment, thus giving
267 ten years in which to pay up the principal. Mr. K. will not
do this.

Yours truly, E. A. WARFIELD."

This letter of August 3rd, 1877, addressed to me by the president of the company, appears to be reply to the letters I have just read, or more especially the letter from Mr. Warfield. Warfield having stated that Kirchoff understood the matter differently and could not make partial payments, the finance committee, upon consideration of the matter, decided to let him have his own way about it, but the president requests me to have the time reduced to five years instead of ten, if I can.

Q. Please explain as briefly as you can the general outline of the plan it was sought to bring about by that correspondence and by the negotiations then pending.

A. I think I have already covered that in substance, so far as I recollect; it was a general scheme for making new papers for the entire indebtedness, giving him an extension of five to ten years.

Mr. SWETT: But that has no relation to the present alleged agreement?

A. These negotiations were carried on for some time during 1877, but were finally abandoned for some reason or other. I think papers were signed by Mr. and Mrs. Kirchoff, but I think Mrs. Diversey refused to join with them in the execution of the papers, and 268 the thing fell through, and that letter of the 3rd of August refers to matters long previous and entirely distinct from any negotiations in regard to the homestead property loan.

Mr. HARBERT: Look at the letter of September 18th, 1877, in your cross-examination, and state whether or not the same expressed the situation and your views of matters at that time and whether or not the taking of the judgment as stated therein did not substantially terminate all previous negotiations in regard to funding the entire loan.

A. Yes; this letter states my views of the matter at that time, and the entry of the judgment against Mrs. Diversey was practically the end of all negotiations looking to the making of new papers for the entire loan.

Q. That is, extending the loan in a different form?

A. Yes.

Q. Do you remember the date of the Reese appraisement?

A. At the time I went with him?

A. Yes.

A. It was very soon after the bill to foreclose was filed—that is, within a few weeks afterwards, I think, and, to the best of my recollection, I think I have seen some memoranda to the effect that it was on the 30th of August, 1878; I know it was about that time, at any rate.

Q. You have said that the letter you last referred to, being the one of September, 1877, substantially closed negotiations 269 for the extension of the loan in a new form. Please state whether or not, shortly after that time, negotiations looking towards a settlement of the matter whereby Kirchoff should retain his homestead upon payments were begun.

A. I don't recollect anything of the kind until after I filed the bill to foreclose the trust deed, which was in July, 1878. I don't recollect about any negotiations during that interval.

Q. That was an interval——

A. Of merely a year. I don't know why I did not commence to foreclose sooner, except pressure of other business.

Q. Do you know whether Mr. Warfield did or did not during that time have negotiations with Mr. or Mrs. Kirchoff or Mrs. Diversey?

A. I do not recollect.

Q. Please state how soon after you began your foreclosure proceedings, in July, 1878, it was before negotiations were entered into with the Kirchoffs and Mrs. Diversey relative to a settlement.

A. Well, I think that immediately after the commencement of the foreclosure proceedings Kirchoff made some overtures to Warfield in regard to the matter, and as the result of that we made this tour of inspection. I do not recollect having any negotiations with Mrs. Diversey or her representative until about a year 270 afterwards, I think; but I cannot say when they commenced. I recollect it was, I think, some time about September, 1879, when I prepared the papers for the settlement with Mrs. Diversey; but just when the negotiations that led up to that were commenced I do not recollect definitely.

Q. I believe you have stated that the negotiations with Mrs. Kirchoff and with Mrs. Diversey were entirely separate?

A. Yes, sir; so far as I was concerned or had any knowledge of it.

Q. Please state whether there was or not a purpose to hold the Kirchoff matter somewhat in abeyance until the settlement was also agreed upon, or state what the facts were in regard to that matter.

A. Well, I know I did not deem it practicable to make a settlement with Kirchoff that would eliminate his property from the foreclosure proceedings and leave Mrs. Diversey out of the arrangement. I considered that it was necessary to make a settlement with her in order to be able to settle with Kirchoff. The settlement with Mrs. Diversey was the subject of considerable negotiation on my part and was a matter of considerable difficulty. I always understood that there would be no difficulty in settling with Kirchoff and his wife.

Q. Did Kirchoff, at any time after the appraisal, make a proposition to purchase the farm also as well as the homestead?

271 A. Yes; he did. I recollect there was something said about that.

Objected to as immaterial.

Q. Please state whether that negotiation was completed or fell through.

A. That fell through. He was not willing to give so much as we thought was necessary.

Q. I will call your attention to your report in your cross-examination, an extract of November 25th, 1878, and ask you to state whether the negotiation therein referred to about the purchase of the farm was the one to which you just referred and which came to naught.

A. Yes; this seems to be the matter that I referred to just now.

Q. Please look at the letter I now show you, dated January 1st, 1879, referred to in your cross-examination, and state whether it correctly stated the facts, and what, if anything, was in the way at that time of executing the agreement which had been made with Mr. Kirchoff for the purchase or redemption of his homestead.

A. This letter correctly set out the facts at the time, and it states why settlement could not at that time be made of the Kirchoff loan. I say in this letter, "I do not dare to settle with him without settling the whole case, as it might prejudice our claim against Diversey."

272 Q. Please state whether or not in case an agreement with Diversey had not been arrived at it would not have been necessary, in order to have carried out the agreement with Kirchoff, for the company to have foreclosed and gotten title by the foreclosure before it could have executed the contract with Kirchoff without prejudicing its rights.

A. That would seem to have been my opinion at the time, and is now, for that matter, that unless an amicable settlement had been made with Mrs. Diversey that foreclosure decree would have been necessary for the protection of the title of the property in the company.

Q. Please state whether or not those facts were communicated to Mr. Kirchoff at the time.

A. I do not recollect that I communicated that fact to Kirchoff at the time. I remember subsequently, about a year after this, at the time I amended my bill by bringing in Runyan and Stanford that I explained the necessity for making the foreclosure to him at that time, but I do not recollect doing so about the date of this letter.

Q. At the time you did explain the same did you explain to him the necessity for making the foreclosure in order to perfect the agreement with him?

A. Well, yes; I explained it in some such way as this, that in order to make the title to that property good (the homestead property) in the company, so that they could convey good 273 title to him and take a good mortgage back from him, it was necessary to get rid of this intervening incumbrance caused by the sheriff's deed, and that in order to do so the better way was to go on with the foreclosure and get a decree and have the property sold. I recollect that Mr. Kirchoff came into my office at that time (I guess I have already stated this) and was a little excited because he thought we were, as he expressed it, suing him again when there was no need of it, as he was ready to close up the matter without any further litigation; that he had agreed to that effect with the company, so I felt called upon to explain to him why that step was taken and why we went on at that time with the foreclosure; he appeared to be rather suspicious that we were not acting in good faith with him, and I was at considerable pains to explain the matter so as to disabuse his mind of any such impression.

Q. Please state whether or not, in correspondence and other memoranda of the company, this entire matter, namely, the loan you have testified about, secured by property of the Kirchoffs and of Mrs. Diversey, was generally called the "Kirchoff matter" or "Kirchoff loan."

A. Yes; it was usually spoken of as the Kirchoff loan number 682; there was another Kirchoff loan, some other Kirchoff on the books of the company.

Q. Please state why the correspondence along in the latter part
of 1878, through 1879, relating to this so-called Kirchoff
274 loan generally, speaks of a settlement with a Mrs. Diversey
instead of a settlement with Kirchoff, if you know.

A. Well, I suppose that was the stumbling block in the way; that was the settlement we found difficulty in making.

Q. Then there was no question during that time about the Kirchoff matter, as you understood it?

A. No; not that I recollect of; it was generally supposed that we could settle it with the Kirchoffs without any difficulty; we knew what they were willing to do, but Mrs. Diversey was litigating the foreclosure case and had set up defenses there, and there were various things that interfered with the settlement with her.

Q. And is it not true that the Kirchoffs had been informed as to what the company would do?

A. Well, I suppose they thought they knew what the company would do; they seemed to have quietly rested under some sort of a belief that the company would settle with them on what they understood to be the terms of settlement.

Answer objected to as irresponsive.

(Answer continued.) I would not care to answer that by yes or no.

Q. Please look at the extract of a letter which I now show you, purporting to be from Daniel Sharpe, vice-president, bearing date January 8, '79, and state from what place the same was written and
what is mean- by "Diversey suit" therein referred to.

275 A. This letter was written by Mr. Sharpe, vice-president of
the company, from Boston. As I recollect, the letter was produced here the other day, when I read it. I understand that what he means by Mrs. Diversey's suit was an old case that had been commenced against her husband during his lifetime and had been revived and carried on against her, as administratrix of her husband's estate, by a person named Johnson.

Q. Had it any connection with this loan?

A. It had no connection with this loan matter at all; that was something that I had talked over, probably, with Mr. Sharpe, or, at any rate, I had written to the company about it, as a claim had been brought up in that suit to have the Kirchoff property, Mrs. Kirchoff's property which she inherited from her father, subjected to the payment of a judgment that Johnson had recovered, together with the property of the other heirs of Michael Diversey, but it had nothing whatever to do with the matters we were trying to adjust, but was entirely outside of it. When he wrote that letter Mr. Sharpe evidently misapprehended the bearings of it.

Q. I will call your attention to your letter bearing date January 14th, 1879, in reply to the letter last referred to, and ask you to state whether or not that is an attempt to explain to Vice-president Sharpe the fact that the so-called Diversey suit was disconnected from this transaction and explained what the same was.

276 A. Yes; this letter of mine is written to correct the misapprehension that Mr. Sharpe evidently labored under in regard to the effect of the suit Johnson *vs.* Mrs. Diversey, and in the letter I explained that it did not affect the title to the Diversey farm at all.

Q. Please state whether or not the agreement which had been made with Mr. and Mrs. Kirchoff was in any way dependent upon any proposed arrangement with Mrs. Diversey so far as Kirchoff was concerned.

A. I do not think it was ever expressed in that way to Kirchoff; that settlement with him was contingent upon settlement with Mrs. Diversey or dependent upon it. I never supposed that Kirchoff could assist us in making a settlement with Diversey, consequently never said much to him about it. At that time he did not seem to have much influence with his mother-in-law, as she seemed to be under the influence of Mr. Weckler, and Kirchoff did not seem to care at all, and I concluded that Kirchoff could be of no assistance in the settlement of the Diversey part of the case and never consulted him about it for that reason.

Q. Do you remember whether Vice-president Sharpe was here at any time during the pendency of negotiations in regard to the settlement of the Diversey branch of the case?

A. Yes; he was here once at least, because the matter was referred to him by the president of the company when he was here. He was especially requested, I think, to take a hand in the matter and see what he could do. 277

Q. Was he at that time informed of all that had occurred so far as you knew of the agreement already made with Kirchoff and of negotiations that were being carried on with Mrs. Diversey in regard to a settlement of her branch of the case?

A. Oh, I think so, fully.

Q. State whether or not he acquiesced in the same or otherwise.

A. Well, as I recollect, Mr. Sharpe was, so far as this Diversey matter was concerned, rather non-committal when he was here; he did not seem to want to agree to a settlement that involved any concessions on the part of the company, and consequently he did not afford much assistance to us at that time.

Q. How was it with reference to the Kirchoff agreement?

A. I have no recollection as to that. I recollect in regard to his course in the Diversey matter more from reading the correspondence since then—my letter to the company—in which I referred to Mr. Sharpe's visit here, and that he did not bring matters to a settlement and did not authorize me to; then his letter of the 8th of January, 1879, in which he expressly authorizes me to go ahead and make a settlement upon the terms I had suggested.

278 Q. Did he make any objection at all to the agreement as already made with the Kirchoffs?

A. Not that I know of.

Adjourned.

KIRCHOFF
vs.
U. M. INS. CO.

FEBRUARY 6TH, 1885.

Parties met pursuant to agreement.

Present: Mr. W. S. Harbert, for complainant, and Mr. Edwin R. Swett, for defendants.

ROBERT B. KENDALL.

Redirect examination by Mr. HARBERT (continued):

Q. Please look at the book now shown you and state what the same is. (Hands book to witness.)

A. Well, this appears to be letter-press copies of letters from the Union Mutual Life Insurance Company from November 30th, 1878, to December 17th, 1878.

Q. Please look at page 85 of said book and state what appears to be thereon.

A. It appears to be a press copy of a letter from John E. De Witt, president of the company, to Daniel Sharpe, vice-president, dated December 2nd, 1878.

Q. In whose handwriting is it?

279 A. It is in the handwriting of a gentleman who was employed by the company as a stenographer. I do not recall his name just now, but I knew him very well.

Mr. SWETT:

Q. Signature and all in his handwriting?

A. Signature and all.

Q. Please read the same.

A. The letter reads as follows:

"Daniel Sharpe, vice-president.

DEAR SIR: Your two favors of the 27th at hand. Note your comments about Loeb; also about the Couch property. In Kendall's report, just received, he speaks about a proposition and an adjustment of the Kirchoff loan. Now, I would suggest, if you will allow me, that you get Kirchoff and Mrs. Diversey and the other son-in-law into our office or somewhere else and have an interview with them, and see if you cannot get the loan straightened out. By your acting as an intermediate party the thing can be accomplished; at least, it is so large an interest it is well worth the attempt.

Yours truly, JOHN E. DE WITT, *President.*"

Q. Please state whether or not you remember the circumstances of the vice-president being in Chicago at about the date of
280 that letter; and, if so, state what you recollect about it.

A. I recollect that about this date Mr. Sharpe was here in Chicago, and that this matter of adjustment of the Kirchoff loan, including some sort of a settlement to be made with Mrs. Diversey, was referred to him by the president, and I think I was also instructed or requested by the president to confer with Mr. Sharpe in regard to the matter while he was here, and that I did talk over the matter with him and explain the position of things and the claims and defenses set up by Mrs. Diversey to the foreclosure suit and the negotiations I had been having with or through Mr. Weckler in regard to a compromise and settlement of the matter. Mr. Sharpe did not decide, I recollect, at that time while he was here whether the company would agree to the proposed terms of settlement or not, and after he returned to Boston I so informed the president of the company. I then received from Mr. Sharpe the letter, which has already been introduced and read in evidence, authorizing me to settle the matter with Mrs. Diversey upon certain terms.

Q. To what extent, if at all, was the settlement which had already been agreed upon between the company and Mr. Kirchoff talked over between Mr. Sharpe, Mr. Kirchoff, Mr. Warfield, and yourself during Mr. Sharpe's visit to Chicago at that time?

281 A. I don't recollect that the Kirchoff branch of the case was discussed with Mr. Sharpe. The Diversey matter was. It was giving me the most trouble, because I already knew that there would be no difficulty in settling with the Kirchoffs; that they were willing to surrender their property in settlement of the indebtedness against them, and only wished to stipulate for a reconveyance of their homestead to them, which they seemed very desirous of saving; for that reason I do not think there was very much said to Mr. Sharpe. I do not recollect; if anything was said it was probably to that effect; that there was no difficulty in adjusting the matter with the Kirchoffs if we could only settle with Diversey.

Q. On the 1st of November, 1879, you write to the company that "Among a lot of deeds forwarded from this office for execution by the company is one to Kirchoff of his homestead lot, so called, which bears even date with the quitclaim deed given by Kirchoff and wife to the company," etc. What deeds, if you remember, were included in the lot of deeds forwarded then?

A. I cannot recollect what the other deeds were. They used to accumulate in my hands, and I would send them forward about as fast as they were recorded. Sometimes I would have quite a lot of them—tax, foreclosure, and various kinds.

Q. Do you remember when you received the deeds from Mrs. Diversey and from Mrs. Kirchoff?

282 A. Well, I remember about when I received them. I think in some reports of mine that have been introduced in evidence the dates are given when I received them. Those dates are correct.

Q. You may state what you did with the Diversey deeds, as to whether you recorded them or not.

A. Yes; the Diversey deed was put on record, and after record was forwarded to the insurance company.

Q. State whether or not you recorded the Kirchoff deed at the same time.

A. I filed the Kerchoff deed for record, but not at the same time.

The deeds, I think, were delivered to me about the same time. By reference to my reports I can fix the date, if necessary.

Q. Why did you not record the Kirchoff deed when you received it?

A. Well, the Kirchoff deed having been executed by Kirchoff, as he explained to me, with the understanding on his part that he was to have a deed from the company of his homestead and of the adjoining lot on Pine street, I didn't feel at liberty to receive the deed unconditionally until I had communicated with the company in regard to the conveyance to be made to him, and i told Kirchoff I would hold the deed until I had written to the company on that subject; that while I had not any doubt that the company 283 would make a deed to him of the lot or lots—of the homestead—on the terms proposed, I did not wish to do anything finally in the matter without first having the formal authorization on the part of the company. I did not wish to take the responsibility upon myself of receiving a deed from him with any such understanding without first getting some direct authority from the company to do so, as a matter of precaution, to avoid any misunderstanding between the company and myself, so I simply placed his deed on file in my office to await the result of my letter to the company. I think I prepared the quitclaim deed from the company to Kirchoff soon after, probably as soon as I could get time to attend to it, and forwarded it. The Diversey deed was placed on record because that matter I considered as settled, and that I had had the proper authority in writing from the company to warrant my closing the settlement.

Q. In the Diversey matter there was nothing to come from the company to Diversey, was there?

A. No; only the release deed from Dr. Boone, the trustee, which had been agreed upon and which I procured and delivered to Mr. Weckler as Mrs. Diversey's agent.

Q. Dr. Boone was then living here, was he?

A. Yes; Dr. Boone was the trustee in the trust deed which I had been foreclosing or trying to foreclose.

Q. The deed which you sent on for the company to execute to Mrs. Kirchoff was subsequently returned unexecuted, was it not?

284 A. No; it never was returned to me; the draft of the deed was not returned. I received a letter from the company declining to execute it, but they didn't return the draft of the deed to me.

Q. Referring to the letter of Nov. 1st, 1879, you state that so far as you know the price was not definitely fixed, and you also say: "I have always told him that the company would not like to sell without a payment in cash on the delivery of the deed, so that is an open question as well as the price." Please explain what you mean by those expressions.

A. I suppose from the inspection of this letter and from my recollection of the circumstances that I desired by this letter to avoid taking any responsibility upon myself for fixing the price upon that property—that is, the price the Kirchoffs should pay to redeem or repurchase it—that being rather out of my line of duties, and although I understood, I think—in fact I am very clear that I must have understood at the time that Kirchoff and Warfield had agreed that the price was to be the appraised value, yet I think I preferred to disclaim having anything to do with that part of the matter, and so I wrote that there was an understanding between Warfield, Kirchoff, and myself that the company would sell this lot back to him and allow him to pay for it in installments; that being in pursuance of the general line of policy of the company in such cases, 285 I felt authorized in becoming a party to it; but I did not care to put myself on record as having fixed the price on it. Perhaps I desired to hedge a little so as to avoid any possible misunderstanding or censure on the part of the company that I had overstepped the line of my duty.

Q. Is that true with regard to the other matter relating to the time of payment?

A. Well, I stated in my letter that Kirchoff had always objected to paying anything down in cash. My recollection is that the objection to paying anything in cash was made at about the time he delivered his quitclaim deed—that is, so far as this particular transaction was concerned. When they were negotiating for a refunding of the entire indebtedness upon terms of partial payments I know that it fell through because he didn't want to make cash payments. He wanted to let the whole thing run until the end of the term, but, as I recollect, at the time he brought in his quitclaim deed to me we talked over the matter of his redeeming his homestead, and he, as I write in my letter, expressed a preference for the semiannual payments, but wanted the first payment to commence six months ahead—six months after the delivery of the deed—rather than, as had been our universal rule, upon the delivery of the deed, and I know I told him that I would submit that proposition to the company, but that I had no idea they would accept it, be- 286 cause they never did; always required a payment down, but with that exception I had no doubt in my mind but what they would make the reconveyance to him upon the terms as understood by him, and that exception I understood was a modification, which he wanted me to procure for him or to suggest to the company. I discouraged him in that, but nevertheless told him I would submit it, and did so in this letter.

Q. State whether or not he made it a condition to the completion of the agreement or whether it was in the nature of a request for his accommodation.

A. Well, I have already stated that he put it in the way of a request for a modification of the terms, as I understood at the time.

Q. What was the express consideration moving Kirchoff to convey his property to the company?

A. Do you mean the consideration expressed in the deed?

Q. No; the consideration expressed by him—what he urged as the chief consideration to him for a quitclaim deed to the company.

A. Well, I don't know how to answer that. I can only say that from all his talk I supposed he wanted to get rid of his obligations to the company and retain in some way his homestead. He seemed to be more anxious about holding onto that homestead than anything else. I understood that was the inducement moving him.

Q. The homestead consists of two parcels, does it?

287 A. I don't know what the homestead, strictly speaking, consists of. There were two parcels of land and they adjoin each other. On one lot his house stood and the other lot was vacant.

Q. In your testimony heretofore in speaking of the homestead, state whether or not you have referred to or included these two parcels as the homestead property.

A. Well, I think I treated the corner lot as, strictly speaking, the homestead lot. I know I prepared the deed for that lot only, and in my letter to which you have drawn my attention I think I distinguished that lot as being the homestead lot. There was not any "homestead" about it, except it was the place where he lived. The title to all the property stood in his wife's name.

Q. But in the agreement for redemption state whether or not the two lots were included.

A. Always, so far as I know. In all that I knew or heard of the agreement in regard to his redeeming, the two lots were considered together. He wanted to buy back these two lots. I made a deed of one only, as I have already explained, I think, because I thought that was fully as much as he was able to undertake to pay for.

Q. What did you do after you received the information from the company that the company declined to execute the deed to Kirchoff?

288 A. Do you refer to the letter of November 5th, 1879?

Q. Yes.

A. In which the president writes me that the finance committee declines to sell the property to Kirchoff for $7,000, but would sell it for $8,400, etc.?

Q. Yes.

A. Well, I replied to that letter under date of Nov. 8th and my letter has been read in evidence. I stated in my reply that I had communicated the company's decision to Kirchoff. I think Mr. Swett asked me if I did communicate the decision of the company to Kirchoff and I stated then that I did not recollect whether I did or not. I wished to explain that because I have remembered since then that I did in some way, either by letter or in person, inform*ing* Kirchoff that the company declined to execute the deed on those terms and for that price, and, in fact, gave him the substance of the company's letter. I do not remember just how I did that, but I know I had an interview with him (I recollect now) after the receipt of that letter, and probably very soon after the receipt of it, in my office, at which interview the matter was talked over and he was fully advised of the decision of the company. I do not know whether that is important or not, but I remember saying on cross-examination I did not recollect.

Q. State whether or not in that interview Kirchoff claimed or maintained his right to his homestead lots, or what he said.

289 A. Well, I don't recollect exactly what he said. I recollect the substance of the conversation on his part was that he had an agreement for the reconveyance of his homestead on the payment of the appraised value to be paid in installments as has been already mentioned.

Q. Did he say anything about their standing by it or abandoning it or anything of that purport?

A. No; he did not say anything to indicate any intention of abandoning his claim; he rather insisted upon his right to have his deed according to his understanding.

Q. Did you record the deed from Kirchoff and wife to the company yourself?

A. I either did it myself or it was done under my direction.

Q. Please look at the deed now shown you and state when the same was recorded. (Hands same to witness.)

A. This is a deed from Kirchoff and wife to the Union Mutual and appears to have been recorded on the 8th day of November, 1879. I said this deed was either recorded by me or under my direction; that is only a supposition on my part. I have no recollection in regard to recording it.

Q. Please state whether or not at or about the date of the record of that deed you had any conversation with Mr. Warfield in regard to the company's action in refusing to go forward and complete the agreement with the Kirchoffs; and, if so, state what the same was.

Objected to as incompetent and immaterial.

290 A. I recollect having some talk with Warfield, after the receipt of the letter from the company in which they declined to execute the Kirchoff deed, relative to the matter, and Mr. Warfield took the ground that Kirchoff was entitled to a conveyance, and that it had been clearly understood between him and the company that he could repurchase his property, that portion of it, at least, at its appraised value and upon the partial-payment plan, and that the company—or president, rather—was not acting in good faith in the matter in declining to convey at the price and in demanding a larger payment than had been talked of. I think Mr. Warfield expressed himself several times to me quite as strongly in the matter to that effect.

Q. After the title became so far perfected in the company by foreclosure and sale do you know whether the company ever tendered Mr. or Mrs. Kirchoff any deed of the property asking the mortgage back for the deferred payments?

A. Never to my knowledge. I have no reason to suppose that they ever did.

Q. How soon after the 8th of November, the date of the record of the deed from Kirchoff to the company, was it ascertained that a foreclosure would be necessary in order to perfect the title notwithstanding the quitclaim deed?

A. I don't recollect how soon after that I discovered the necessity for proceeding with the foreclosure suit. I think I amended 291 the bill for the purpose of bringing in the additional defendants in January following, some time.

Q. It was, then, between the 8th of November and the date of the amending of the bill that you discovered the necessity of going on with the foreclosure, notwithstanding the deed?

A. I think it was. I may have discovered it at about the date. I don't recollect.

Q. State what was Mr. Kirchoff's attitude right along from the time of the recording of the deed, so long as your connection with the company continued, with respect to his rights to have a conveyance of his property back whenever the company could safely grant it and upon the terms which had been agreed upon.

A. Well, so far as I know, Kirchoff claimed that he had a contract with the company for the reconveyance of the two lots in question; I do not recollect that he was particularly urgent or persistent in making his claim. He did not come near me much. The only occasion after that time when he came to see me in regard to the matter, as far as I recollect now, was at the time I ame*dn*ed the foreclosure bill by making Runyan and others parties, which I have already testified about. He came in then and wanted to know what it all meant, said he thought it was all settled and there was to be no further proceedings in court, and so forth, and I explained the matter to him.

Q. Look at the letter book I now show you and state what the same is.

292 A. This is a letter-press copy book of the Union Mutual Life Insurance Company containing press copies of letters written by the president and other officers of the company from the principal business office of the company.

Q. Examine page 606 of said book and state what the same purports to be.

A. On page 606 there is a press copy of a letter dated March 14th, 1879, addressed to me in Chicago by John E De Witt, president of that company.

Q. Did you receive the original of which that is a copy?

A. I have no recollection of receiving that letter. I presume I did if it was sent.

Q. Please read the same.

A. The letter reads:

"MARCH 14TH, 1879.

R. B. Kendall, Esq., 133 La Salle St., Chicago.

DEAR SIR: We desire to call your particular attention to the following loans, the overdue interest on which is very large and daily increasing:

No. 74 and 214, Maher.
9, 88, and 439, Rae.
236, 293, and 331, Julian.
629 and 1607, Larmon.

293 682, Kirchoff.
730, Burroughs.
785, Jones and Chapin.
1044, Campbell.
1165, Mason.
1170, Holland.
1335, Couch.
1375, Byrne and O'Brien.
1571, Stinson.

We wish vigorous measures to be taken in all the above cases that will permit of it, and wish matters pushed to a speedy settlement. We have no desire to make such an exhibit of overdue interest on a few loans at the end of the present year as we are compelled to at the beginning.

Yours truly, JOHN E. DE WITT, *President.*"

Q. In whose handwriting is that letter?

A. It is in the handwriting of the clerk of the company at the head office.

Q. Are you familiar with the handwriting?

A. I am; it is the handwriting of a Mr. Cross.

Q. Then in the employ of the company?

A. Yes.

294 Recross-examination by Mr. SWETT:

Q. Was your appointment in writing?

A. No; I think not originally.

Q. Was there an instrument in writing of any character prescribing your duties or your authority?

A. There was not; none that I recollect.

Q. You have stated in your direct examination that you acted under instructions in carrying out what was understood to be the general policy and wishes of the company. How were such instructions received?

A. Well, they were received from the president of the company, sometimes by personal interview when he was here or when I was there in Boston and by correspondence.

Q. Had you any authority to make a trade in regard to real estate that should bind the company or to complete any negotiations in regard to real estate without reporting to the company and getting its sanction?

Objected to as incompetent, it not appearing that the complainant had any knowledge of any limitations of the power of the witness.

A. I never understood that I had any special authority to make trades any further than would naturally fall within the scope of the authority of an attorney transacting business for a client.

295 Q. Did you ever receive any instructions from the company in relation to the agreement, in regard to which you have testi-

fied, for the redemption of the two lots involved in this suit? If so, what are they?

Same objection.

A. I don't recollect of receiving any instructions except so far as contained in the letters introduced in evidence here.

Q. Was it your custom to make monthly reports of all steps that you took in relation to pending cases and covering the work that you did as attorney for the company?

A. It was my custom to make monthly reports covering in a measure the business transacted by me and the various steps taken in the different matters so far as it was practicable to report such things and so far as I deemed it necessary.

Q. In addition to these monthly reports were you in the habit of writing letters almost daily with reference to the progress of the work in your hands?

A. In the early part of my employment with the company here in Chicago most of the reports were in the form of letters. After I adopted the system of making a monthly report regularly I was not in the habit of writing letters unless some matter of special importance made it advisable to do so or unless I was requested specially to report on some matter, which happened pretty often.

296 Q. It would be a matter of special importance, would it not, for you to make an agreement such as the one upon which this suit is based, and would you not be likely to report such an agreement either in a letter or in a report to the company?

A. I think if I had ever made such an agreement I should have reported it.

Q. Did you make such an agreement?

A. I never did. I have already testified that I never made any agreement with Kirchoff; that I was only cognizant of an agreement that I understood Mr. Warfield made with him.

Q. Then I understand you to say that you never made any agreement of any kind with Mr. Kirchoff in regard to the lots in question?

A. I never did.

Q. Who made the agreement?

A. Well, I was informed by Kirchoff and by Warfield that the agreement was made on behalf of the company by Mr. Warfield.

Q. Were you present at the time of the making of the agreement?

A. I don't recollect that I was. I have been present when the matter was referred to as an existing agreement, but I don't think I was present when the agreement was made. I don't remember being present when any agreement was made.

Q. Do you know what the terms of that agreement were; and, if so, what is the source of your information?

297 A. Well, I might say here that I so far took part in the matter of an agreement with Kirchoff as to say that he could buy his property back upon terms to be agreed upon.

Q. But you never arrived at any conclusive agreement?

A. I don't think I ever did. I never undertook to agree definitely as to the price or the exact terms of payment; only in a general way gave Mr. Kirchoff to understand that the company would sell it to him the same as they would to any one else.

Q. Going back a little, did you ever report to the company in writing that such an agreement had been made?

A. I don't recollect of ever reporting to the company about that agreement until I sent the draft of the deed, and that letter will speak for itself.

Q. Did you ever report to any officer of the company orally that such an agreement had been made?

Objected to as immaterial.

A. I don't recollect.

Q. You had a great many conferences with Mr. Kirchoff in relation to the whole matter?

A. Not a great many; no.

Q. State as briefly as you can the terms of the agreement.

A. The terms of the agreement that I understood to have been entered into were that Kirchoff was to have the privilege of redeeming that particular part of his property upon surrendering the rest of it.

298 Q. Redeeming it upon what terms?

A. I always understood in a general way that the appraised value put upon it by Mr. Rees was to be the price at which he was to redeem it.

Q. And the appraised value was how much?

A. That appraised value was, I recollect, $7,000 for the corner lot and $2,500 for the Pine St. lot.

Q. What were to be the terms of payment?

A. The terms of payment, as I was informed by Mr. Warfield, were to be one-tenth in cash and the balance, spread over 9 years, in annual or semi-annual installments.

Q. Is it your understanding of the agreement that the price to be paid for the land was $9,500, which was the appraisement, or $10,000?

A. I understood it was to be the appraised value.

Q. I understand that all you know about this agreement is that you have heard it alluded to in a general way; that you were never present when it was made.

A. I don't know how many times that agreement was made nor when it was originally made. About the first that I knew anything about it was at the time the arrangement was made with Kirchoff to go and visit the property for the purpose of appraising it.

Q. One of the terms of the agreement to which you alluded was the making of a cash payment, was it not?

299 A. I so understood it.

Q. Did Mr. Kirchoff ever come to you with the money to carry it out—did he ever make a tender?

A. No, sir; he never did to me.

Q. Did he ever express himself as having the money ready to pay it, and from your knowledge of his circumstances at that time and your knowledge of the man do you think he was ready to carry out that contract?

Last part of question objected to as immaterial.

A. There was a time when I supposed from what appeared to be Kirchoff's circumstances that he was able to make such a payment. He always talked as though he could make the necessary payment until the time came for drawing the deed; then he wanted to postpone the payment.

Q. Did he refuse to make a cash payment at the time the deed was drawn?

A. No; he did not refuse to; he wanted it deferred.

Q. The deed was drawn and delivered to you without any cash payment being made, was it not?

A. Kirchoff's deed?

Q. Yes.

A. There never was any cash payment made that I know of.

Q. And then Kirchoff made a request, did he not, that the company allow him to redeem on long time, making the first cash payment at the end of six months?

A. Substantially that; yes.

300 Q. Did you understand at the time that there was any definite agreement in regard to both lots?

A. Yes.

Q. You made a draft of a deed and sent it to the company, did you not?

A. I did.

Q. Which has been introduced in evidence?

A. I believe it has.

Q. Was that deed drawn by you for the purpose of carrying out the contract that had been made, as you understood it?

A. It was to that extent.

Q. How did it happen that you included only one lot in the deed?

A. Well, I think I have explained that very fully. I tried to discourage Kirchoff from undertaking the redemption of the two lots and told him that I thought the corner lot there, where his house was, was as much as he was able to take care of and that he had better make an arrangement in regard to that first. I rather overruled Kirchoff, perhaps, in that matter. He wanted a deed covering both, and I told him I would draw a deed first covering the homestead.

Q. Did he consent to it?

A. Yes; he assented to it rather reluctantly, I think; he allowed me to draw up the deed and send it; he understood that I was doing it.

301 Q. Look at the deed I now hand you from Kirchoff and wife to the Union Mutual Life Insurance Company, which has been introduced in evidence and marked as Exhibit D, and state the date of the record of said deed.

A. Nov. 8th, 1879.

Q. You forwarded the draft of the deed from the company to Kirchoff that you had drawn, did you not?

A. I forwarded it to them with a letter which has been produced and read in evidence here.

Q. You received an answer from the company declining to execute the deed and naming a price for which they would sell the property, did you not?

A. I did.

Q. Has that letter been introduced in evidence?

A. It has.

Q. Did you then reply to that letter from the company?

A. I did.

Q. Has your letter been introduced in evidence?

A. It has.

Q. State the date of your reply.

A. Nov. 8th, 1879.

Q. Did you receive any instructions from the company to record the deed from Kirchoff and wife to the company?

A. None that I recollect.

302 Q. Did you hold the deed in your hands in the nature of an escrow to be delivered to the company when they should fulfill their part of the agreement, as you understood it?

A. I don't think I held it exactly in the nature of an escrow. I think I stated the matter somewhat in this way to Kirchoff at the time, that I would take his deed, and I would write the company in regard to the conveyance back to him, and that in the meantime I would not put his deed on record nor take any advantage of him, intending to keep the matter open, so far as I can recollect now about it, until he had settled definitely the terms of his contract with the company, if he had any.

Q. If it was your understanding that the matter was still open at the time you received the letter from the company refusing to execute the deed, and if you received no instructions from the company to have it recorded, why did you not hand the deed back to Kirchoff and wife instead of having it recorded?

A. I think I sent for Kirchoff on receipt of that letter. I know I had an interview with him after the receipt of the letter—very soon after and very likely on the same day—and I think I tendered Kirchoff his deed back again or at least I gave him the opportunity to withdrew the deed if he didn't wish to deliver it, but he concluded to deliver the deed, insisting that he had a contract and would stand on his agreement with the company. I know I never recorded that deed without having an understanding in reference to it, and I don't think it was recorded by mistake.

303 Q. Is the answer to this question based upon an independent recollection of the facts or upon reasoning at the present time upon what must have been from what occurred?

A. I don't recollect everything in connection with the matter. I do recollect having the interview with him in my office and discussing with him the company's letter refusing to make the conveyance to him, and I do recollect that he insisted that he had an agreement with the company, and it is my best recollection that I told him that he could withdraw that deed if he wished to, and I do recollect that he didn't withdraw the deed.

Q. Subsequent to this time you, as the attorney of the Union Mutual Life Insurance Company, proceeded to perfect the foreclosure of that trust deed, did you not?

A. I did.

Q. Did Kirchoff make any defense to that suit?

A. No; he did not; it went by default, so far as he was concerned or Mrs. Kirchoff.

Q. He had notice of the proceedings and frequently talked with you in regard to them, did he not?

A. He had notice, because there was service of process on him, subpœna from the United States circuit court. He knew of the pendency of the suit. I don't know that he frequently talked with me about it. I don't think he did talk much about the suit.

304 Q. As a part of the proceedings in that suit, did you ever take any steps toward ejecting Kirchoff from the property?

A. I don't think I ever did. I don't think I ever initiated any proceedings to eject him.

Q. Were you ever instructed by the company or Mr. Warfield to eject him from the property?

A. I think I was requested by Mr. Warfield to get possession for him, as receiver, of the property occupied by Kirchoff because he had failed to pay rent stipulated in his lease, and I think I intended to have done so, but I don't think I ever got as far as to make any application to the court for assistance in the matter.

Q. Did Kirchoff ever inquire of you why you were proceeding with the foreclosure?

A. Yes; he did on one occasion.

Q. What did you tell him?

A. I told him that certain complications in the title that I had discovered since the delivery of his quitclaim deed pertaining to the homestead lot made it necessary, in my opinion, to proceed with the foreclosure, get a decree, and have it sold.

Q. Was any reference made to this agreement at that time?

A. Well, yes; I think Kirchoff had something to say about his buying back that property, with reference to the effect the foreclosure proceedings would have. I didn't discuss that 305 matter much with him. I think I told him it wouldn't make any difference. I recollect explaining to him that in any event it would be better for the title that it should be foreclosed in that way, to get rid of this intervening incumbrance, and that until that was done the company could not give a good title to it nor take a good title back under a mortgage. There were other reasons influencing me to proceed with the foreclosure, but I don't think I explained to him, because I didn't think it was necessary nor useful. The defect in the title to this homestead lot was what necessitated the amendment to my foreclosure bill by making Runyan and his assignee in bankruptcy and Stanford, who purchased at sheriff's sale, parties.

Q. You say you told him at the time that the foreclosure would have no effect on the bargain that had been made?

A. I think I told him substantially that.

Q. And did you give him the idea at the time that the foreclosure proceedings would improve the title, and that it would be for his benefit as well as for the company?

A. I did in the event that he became the purchaser.

Q. This was subsequent to the time that you had received the letter from the company repudiating the bargain, was it not?

A. Yes, sir.

306 Q. In all these foreclosure proceedings Mr. Kirchoff never took any part—just let them go by default?

A. He did.

Redirect examination by Mr. HARBERT:

Q. Did your connection with the company terminate previous to the application for a writ of assistance?

A. It did.

Q. Were you present at any conversations between Mr. Warfield and Mr. Kirchoff when the matter of the application of the rents from the property was talked over?

A. No.

ROBERT B. KENDALL.

Mr. GROSSCUP: This testimony with reference to the agreement with Kirchoff all goes subject to objection, of course?

COURT: Yes.

Continuation of Master's Report.

307 JUNE 11TH, 1885—2 o'clock p. m.

Present: W. S. Harbert, Esq., on behalf of the complainant; Edward R. Swett, Esq., on behalf of the defendants.

CHARLES KLEIN, a witness called on behalf of the complainant herein, having been first duly sworn, was examined in chief by Mr. HARBERT and testified as follows:

Q. Please state your name, age, place of residence, and occupation.

A. Charles Klein; 211 West Van Buren street; 35 years of age; Taitir's clerk.

Q. Do you know Julius Kirchoff?

A. Yes, sir.

Q. Were you in his employ in about 1878?

A. Yes, sir.

Q. Where was Julius Kirchoff doing business in 1878 or at the time you speak of?

A. 122, '24, '26, '28 Clark streets.

Q. In Chicago, Cook county, Illinois?

A. Yes, sir.

Q. In what capacity were you employed by him?

A. I was bartender and collector.

Q. What business was he running there at that time?

A. Saloon and bottling beer business.

Q. Do you know E. A. Warfield and Robert B. Kendall or either of them?

308 A. Yes, sir.

Q. Both of them?

A. Yes, sir.

Q. Were you present at any conversation which occurred about the time you have mentioned, at which Mr. Warfield, Mr. Kendall, and Mr. Kerchoff were present?

A. Yes, sir.

Q. Where did that conversation occur?

A. Basement of 126 Clark street.

Q. What time of the day was it?

A. Some time in the afternoon.

Q. Now, please state all that you remember that was said by either of these parties in that conversation.

A. This is the way it was: I was called in there to see one of the gentlemen that was sitting down in there—to see one of the gentlemen that was sitting down in the back part of the office—and they was talking about some business matters, and I overheard Mr. Warfield say, "I am glad to say the thing is settled and you are satisfied and we are satisfied," and then they talked about—in regard to the homestead, and Kirchoff said—or Warfield, I meant to say—"It is satisfactory to you and satisfactory to us, and I am glad the thing is settled, and you will retain your homestead at the valuation of what it is worth at the present time," or "what it is worth." I don't know whether they used the word- "at the present time" or not.

309 Q. Was there anything said at that conversation about any deeds?

A. As far as deeds is concerned, I couldn't answer you, but, as far as I could understand from the conversation they had there—I was there a little while—the homestead was his; belonged to him and his wife.

Q. Was anything said that you remember concerning Kirchoff and his wife making a conveyance to the company of the other property, or the property in a mortgage or trust deed?

Objected to by defendant as leading.

A. That I couldn't say, because I wasn't there during the whole conversation.

Q. What, if anything, was said by Mr. Kirchoff in reply to what you have said Mr. Warfield said?

A. Well, gentlemen, let's go and take a drink on it. I am satisfied, and so are you satisfied.

Q. Was anything said, so far as you remember, about any reason given by Mr. Kirchoff why he wished to retain the homestead?

Objected to by defendant as leading.

A. He says, If everything is lost, I have got a home for myself and wife, anyway. That belongs to us.

Q. Do you know where Mr. Kirchoff's homestead was at that time?

A. Corner of Rush and Pearson streets.

Q. In the city of Chicago and county of Cook?

A. Yes, sir.

310 Cross-examination.

By Mr. Swett:

Q. When did this conversation to which you refer take place?

A. About seven years ago.

Q. In what month was it?

A. Oh, I couldn't exactly tell you the month, but I know the circumstance happened about that time; that is all.

Q. What year was it?

A. In '78, of course.

Q. Give us as near as you can what month it was.

A. It was either August or September—the latter part of August or fore part of September—I think.

Q. You are positive in regard to the time—that it was just about that time?

A. I think it was about that time.

Q. Did you ever see Mr. Kendoll and Mr. Warfield at any other time?

A. Oh, I have seen the gentlemen several times.

Q. Where did you see them?

A. I seen Kendall on the street and I seen Warfield on his office and on the street.

Q. Did you ever see them in there any other time?

A. Where?

Q. In the saloon.

A. Oh, yes.

311 Q. How many times do you think you saw them in the saloon?

A. Oh, seen Kendall dozens of times, and I seen, probably, Mr. Warfield the same amount of times.

Q. Were they in the habit of going in there for their dinner?

A. I am not positive about Mr. Kendall, but I am positive that Mr. Warfield had dinner there.

Q. You say you were bartender there. Did you stand behind the bar?

A. Part of the time and part of the time outside.

Q. Was it your business to go to a customer and take his order and then go and get the food and the drinks, whatever it was he ordered?

A. Not in the saloon. I done it several times in case of necessity.

Q. You did it in this case?

A. I did it in that case. I was downstairs in the office in regards to my collection.

Q. That is, collecting for what they ate and drank?

A. What is that?

Q. You went in there to collect for what they ate and drank?

A. Oh, no. I had business various times with the book-keeper in regard to my collections that I had to do outside for Mr. Kirchoff—the bottled-beer business.

Q. Was the book-keeper down there?

A. Yes.

Q. At that time?

A. I don't know whether he was or not; his office was
312 there, and I used to keep my bills and papers down there and my clothes.

Q. What was it you went in there for on this occasion?

A. I think it was to find out something about my collections; there was some parties come to the office and paid.

Q. Who was it that you were going to find this out from?

A. The book-keeper.

Q. Was the book-keeper there?

A. I presume he was; he was around the house somewhere.

Q. Do you remember any conversation that you had with the book-keeper?

A. All the conversation I could have with him was as regards the business. I would merely ask him if there was any parties there to pay any bills while I was out; my habit used to be if a man wasn't in to leave the bill.

Q. How long did you stay there in the office?

A. I stayed there, you might say, half an hour; I was in and out several times.

Q. Did you talk with these gentlemen yourself?

A. Did I talk with them on that occasion?

Q. Yes.

A. I had no business to; no, sir; just waited on them as they told me to bring a bottle of wine, and I brought it and they drank it. The conversation was carried on; I couldn't very well help hearing them, because I was standing right there.

Q. Did you wait on anybody else during that half hour?

A. Not that I know off.

313 Q. Any other customers?

A. Down there, or in the whole establishment?

Q. Yes.

A. I may have; yes.

Q. Do you remember distinctly whether you had or not?

A. Yes; I suppose I waited on somebody else besides them.

Q. What was your business—to make yourself useful around and waite on people, was it not?

A. Yes, sir.

Q. What impressed this particular conversation on your mind?

A. Because it was a kind of novel table that they had there; it was a half beer barrel standing on the floor, and they was drinking and would put their glasses on there. I was going to put the glasses on the desk, and Mr. Kerchoff says, "Lay them on here; this is good enough."

Q. Were you ever present at any other conversation between the same gentlemen?

A. Yes, sir; several times.

Q. In the saloon there?

A. Oh, they might be standing at the bar, talking.

Q. Do you remember what they said?

A. Well, yes; in some respects.

Q. Give the substance.

A. Oh, talking about business matters.

Q. Give it with the distinctness that you have given this conversation

314 A. Oh, Mr. Warfield might come into the saloon there and Kirchoff say, "How is business?" or something like that.

Q. I want to know what they did say. State what they said at any other conversation.

A. Well, they may have come in there and spoken on a general kind of business way by themselves or something of that kind.

Q. I want to know what they did do, not what they may have done. You have spoken of exactly what they said in this conversation, and you said the way it was impressed — your mind was because they had half a beer barrel for a table. Give some other conversation with equal distinctness, if you can.

A. I used to wait on the parties, and, of course, they would have a little conversation—just a matter of a little business conversation.

Q. They came in there frequently and took their dinner, didn't they?

A. Mr. Warfield—I have seen him there several times, taking his dinner there.

Q. And you would be around there when they were eating?

A. Oh, no; that would be outside of my business. I don't know that I ever waited upon Mr. Warfield—that is, to fetch him his dinner or anything like that.

Q. State again what was said in this conversation.

A. In what conversation?

Q. The one you have testified to here when they drank off the beer keg.

315 A. Kirchoff or Warfield said, "Mr. Kirchoff, are you perfectly satisfied with the arrangements we have made? We are both perfectly satisfied," and Kirchoff said, Yes, and Mr. Warfield said, Yes, or something to the same effect.

Q. Do you know what arrangements they referred to?

A. Yes; regarding their property, and, as far as I could surmise, it was as regards their property, and Mr. Kirchoff was to retain the homestead.

Q. What else was it that you heard that you drew your surmises from?

A. They was talking about the property every day or two. Of course, I had a little idea that that was what they was doing, and that was what put it into my head to listen to it; that was all. I was a little inquisitive.

Q. You don't know what the agreement was?

A. In what respect?

Q. What was the agreement?

A. The agreement was that Mr. Kirchoff was perfectly satisfied and Mr. Warfiel*f* was perfectly satisfied, and they was talking about the*re* property. I know they was talking about property at the time.

Q. What was it they were satisfied about?

A. Mr. Warfield says, "Kirchoff, you are satisfied with the agreement we have made now and I am satisfied."

Q. What was the agreement?

A. That I can't say exactly. I don't know.

316 Q. Has any one talked to you about this matter from that time to this?

A. No; I only happened to meet Mr. Kirchoff, and I told him I recollected about the case because some other parties told me that he had a big lawsuit.

Q. When was it you met Mr. Kierchoff?

A. I have not met Mr. Kierchoff now in four or five months, until three or four days ago.

Q. What was said when you met three or four days ago?

A. He asked me to come downtown.

Q. What did he want you to do?

A. He asked me if I recollected about that. In fact, I commenced myself. I was on Van Buren street, and he happened to see me sitting in front of the house, and I dressed myself (I was working at the time) and changed my clothes, and I went down as far as Halsted with him, and I said, Kierchoff, how are you getting along with that suit of yours? And that is the first time Mr. Kierchoff spoke to me about it.

Q. Do you know what he came up to your place for?

A. I don't know that he came up to see me; he came up to the house there and spoke to me.

Q. You say that he told you he wanted you to come downtown?

A. He says, I will see you downtown some time; and he says, "When will you be down?" And I says, "I will be down every day." I told him I would see him some time Monday, I think it was, and he was not there, so I went about my business again.

317 Q. How does it happen that you are here now?

A. Because I came down to see if he wanted to see me for anything, because I wanted to change my business, and Mr. Kierchoff is around a great deal, and in case Mr. Kierchoff should happen to hear of anything he might tell me about it.

Q. Didn't he tell you anything about coming here?

A. Coming here?

Q. Yes.

A. No, sir.

Q. Then you didn't know that you were coming here until a few minutes ago?

A. Until I went up to Mr. Harbert's office.

Q. How did you happen to go there?

A. Mr. Kierchoff told *me* he would tell me whe*n* I had to go to.

Q. Hadn't you talked to Mr. Kierchoff about what you were going to say?

A. What I was going to testify to? No, sir.

Q. Did you talk with Mr. Harbert any?

A. Yes, sir; I told him what my testimony might be or would be.

Q. But that is the first time you knew of it, when you went up to Mr. Harbert's office?

A. That I was going to testify here?

Q. Yes.

A. Yes, sir.

318 Redirect examination.

By Mr. Harbert:

Q. Please describe the place where the conversation occurred, as to whether it was in the main eating room or in a separate place.

A. 122 and 124 Clark street was a rest-urant and saloon, and right at the corner was a little entrance went down about four or five steps; then there was a bottling establishment and wine-room and ice-house back of that. Under the sidewalk was where the conversation happened.

Q. Is the office there?

A. Well, no; the private office is in 124 Clark street. The book-keeper's office was there.

Q. Was this place whe*n* the conversation was had a private, retired place or a public place?

A. Private and retired. I don't understand exactly what you mean.

Q. Was it in the middle of a crowd where other customers were f*er*quenting or was it substantially by itself?

A. As regards that, all the customers in the house could go in there. Nobody went down there except parties that wanted to order bottled beer or wine or something like that or had business with the book-keeper.

Q. Then it was rather a retired place?

A. Rather retired, you might say.

319 Recross-examination.

By Mr. Swett:

Q. Where was it this conversation occurred?

A. Where the beer barrel was?

Q. Yes.

A. 126 Clark street.

A. What part of the room?

A. Back of the book-keeper's office.

Q. Where was the book-keeper's office?

A. In front of where they were talking.

Q. In what part of the basement were you talking?

A. Well, I should say about the front part of the office.

Q. The front part of the office?

A. Yes, sir.

Q. Was it under the sidewalk?

A. Well, I called it under the sidewalk. There was a glass screen right over—a bull's-eye was right over.

Q. People walking right over your heads?

A. They could walk over it; yes, sir.

Q. Was that where the book-keeper's desk was at that time?

A. Just a little front of where the conversation happened.

Q. Was the book-keeper's desk under the sidewalk, too?

A. Oh, no; just a little this side of the bull's-eye. It is an iron sidewalk with these little glasses in.

Q. You were in the habit of overhearing a great many conversations every day, were you not, of people who came in—hundreds of them every day, didn't you? 320

Objected to by plaintiff as not proper recross-examination.

A. Oh, I was just staying there, and had nothing else to do and couldn't very well get away and couldn't help but hear.

Q. (Question repeated.)

A. No, sir; I wouldn't have time to stand around and hear a hundred conversations in a day.

Q. Can you remember any other conversation that occurred that day between any parties in that saloon?

A. Between them parties?

Q. Between any parties, no matter who.

A. Well, you see I can't exactly set the date when this conversation happened. I can come pretty near what time it was, but I can't state the exact date when the gentlemen had the conversation there; all that refreshes my mind is when they drank on that beer keg there——

Q. As I understand it, all that you remember that they said was that they were glad some matter was closed up; that they were both satisfied, and that Kierchoff proposed that they take a drink over it. That is about the substance of what you heard, is it?

A. Mr. Warfield said, "Mr. Kirchoff, you are perfectly satisfied with the way this thing is settled now?" and Mr. Kirchoff said, "I am, and I suppose you are, too."

Q. And that is all you heard?

321 A. Mr. Warfield said, "Now everything is satisfactory, and it is O K."

Q. That is all you heard?

A. Yes, sir—that is, with the exception of what he spoke about his homestead.

Q. What did he say about that?

A. He said, "That homestead is mine and belongs to my wife and I."

Q. He said it was his, did he?

A. Well, "It belongs to my wife and I."

Q. You are perfectly certain about that, that he said it was his, and that it belonged to himself and wife?

A. Well, something to that effect. I couldn't exactly tell you the exact way it was said.

Q. But you are as certain of that as you are of the other?

A. As certain of what?

Q. You are as certain of what he said about the homestead as you are about being satisfied that the thing was closed up?

A. That Mr. Kierchoff was satisfied and Mr. Warfield was satisfied?

Q. I say you are as certain of one thing as you are of the other that was said there?

A. What I told you—I am certain what I did say.

Q. Now, state what you understand the agreement to be.

A. I wasn't there to any agreement.

Q. And you didn't hear them say what the agreement was?

A. No, sir.

Q. But you understood that Kierchoff owned the homestead?

322 A. He says, "That will be left to me and my wife" or "my wife and I." That was the word he used. He always used Mrs. Kierchoff's name before himself.

Q. Nothing was said about whether he was to pay any money?

A. Oh, yes; he was to get the property for what it was worth. "You pay me what it is worth now," that was what Warfield said, "and you will get it back and then it is yours," they said; that was the words used, and after that I was always under the impression that the place was his, after I went to work for him on the North side again.

Q. What you have testified to already is all that was said, is it?

A. All of my recollection that I can think of.

Q. Was anything said about what it was worth?

A. Not in my presence.

Q. You said something awhile ago about a valuation?

A. I did.

Q. What was said about it?

A. Well, "You pay me" or "Pay us what it is worth and it is yours" was what was said. At the time the way they spoke I couldn't exactly get all the words that they used, but I get it as near as I can possibly think of.

Q. Is it not a fact that you have a very indefinite recollection about this whole thing?

A. I don't know why.

Q. What did Mr. Kierchoff tell you he wanted you to go
323 Harbert's office for?

A. I happened to meet Mr. Kierchoff and he said, "Come and take a drink with me and come to Harbert's office with me."

Q. When was this?

A. This forenoon.

Q. You just happened to meet him?

A. Just happened to meet him.

Q. Nobody told you that they were going to take a deposition today?

A. No, sir.

Q. Where did you meet him?

A. On the North side.

Q. Where on the North side?

A. In a saloon.

Q. Where was this saloon?

A. On North Clark street.

Q. What were you over there for?

A. Me? I go all over town.

Q. You live on the West side, don't you?

A. I live on the West side?

Q. What were you doing over there?

A. Going around to see friends. I want to get into the saloon business again, and, of course, it is natural for me to go around saloons.

Q. You didn't know that Kierchoff was going to be there?

324 A. No; he didn't promise to be there; no.

Q. Did you have an arrangement to meet him there?

A. No, sir.

Mr. Julius Kierchoff: They all know that I go there every day.

Q. Now, Mr. Kline, notice was served on me three or four days ago that they were going to take a deposition here today, and I understand you to say that you knew nothing of it; that you live over on the West side, and you accidentally happened to go onto the North side and met Mr. Kierchoff in a saloon without knowing that you were going to meet him there.

A. Yes, sir.

Q. And that Kierchoff suggested that you go up to Harbert's office, and then you arranged to come over and take this deposition.

A. Yes, sir,

The whole question objected to as argumentative, leading, and as intending to raise a false presumption that notice was served that the deposition of this witness should be taken.

Q. What time this morning were you at Mr. Harbert's office?

A. Half past twelve, quarter to one.

Q. And what time were you told to be at the master's office to give your deposition?

325 A. I didn't know where I was going; didn't know whether it was a master's office or not. Mr. Kierchoff told me he would like to have me come over here.

Q. What time did you get here?

A. You seen me coming in there.

Q. What time of the day was it?

A. It must have been about a quarter past two.

CHAS. KLEIN.

Adjourned.

Mrs. ELIZABETH KIERCHOFF, being first duly sworn by the master, testified as follows:

Direct examination by Mr. HARBERT:

Q. State your name, age, and place of residence.

A. Mrs. Elizabeth Kierchoff; about 47 years of age; 525 North Clark street, Chicago, Illinois; I am the complainant in this suit.

Q. Is Julius Kierchoff your husband?

A. Yes, sir.

Q. What do you know of the defendant, the insurance company——

A. I authorized my husband to do all my business with that company.

Q. Had you borrowed some money from that company?

A. Yes, sir; on the land, on the real estate.

Q. Was your husband your agent?

A. Yes, sir.

326 Q. What authority did he have to act for you as agent? Now, tell what you told him he might do.

A. To do just the best for me. We wanted him to make the best arrangement he could, but to save the homestead for me in any event.

Q. Did he make the arrangement; and, if he did make any, what arrangement did he tell you that he had made?

A. He told me that we had to sign over all what we had to the *the* company, and that was the time when I told him to do the best he could to save the homestead for me, and then to pay one thousand dollars as soon as the papers would come, and then after that to pay the thousand dollars until we paid ten thousand dollars, every year a thousand dollars until we had it paid off.

Q. Were you to pay any interest on that?

A. With interest; yes, sir.

Q. Was that before you signed the deed?

A. Yes, sir; before we signed the deed, because I would not have signed the deed if it had not been that I did wish my husband to keep the homestead for me.

Q. You would not have signed the deed, then, if you had not expected to retain the homestead?

A. Yes, sir; to keep it.

Q. What excuse, if any, was given you as to why the company did not give you the homestead as agreed to?

A. It was, if he should sign it over to them it would be
327 better for us, but I think if he had kept it in our hands we
would have done better for ourselves. We could have made a great deal more money out of it.

Q. You could have paid the debts and kept the homestead?

A. Yes, sir; we could and keep the homestead also.

Q. Would you have made the deed if you had not expected and understood that you would get back your homestead?

A. I would not; of course not.

Q. What do you mean by the homestead?

A. I mean the lot on the corner of Rush and Pearson and one on Pine street. It is now Water Tower place, but it was Pine street at that time.

Q. Do you remember of your husband and Mr. Warfield and Mr. Kendoll and Mr. Rees coming to your house at one time?

A. Yes, sir; I remember that.

Q. What did they say to you at that time about what they were going to do about your matters?

A. When they came there my husband told me all what it was for. It was on account of appraising the land to make out this deed to the company according to the contracts we made with them.

Q. Did they appraise the house then; and, if so, at how much, do you remember?

A. It was then two lots, ten thousand dollars.

328 Q. Were you always ready and willing to carry out your part of the agreement that your husband had made for you?

A. Oh, yes, sir; I was.

Q. Why did you make or sign the deed to the company? Tell it again.

A. It was so I could preserve the homestead.

ELIZABETH KIERCHOFF.

Subscribed and sworn to before me this 30th day of January, A. D. 1886.

ARNO VOSS,
Master in Chancery of the Circuit Court
of Cook County, Illinois.

And the complainant then rested.

And the defendant thereupon read the deposition of John E. De Witt, which is in the words and figures following:

Stipulation.

STATE OF ILLINOIS, } ss:
Cook County, }

In the Circuit Court for said County.

329 ELIZABETH KIRCHHOFF
vs.
THE UNION MUTUAL LIFE INS. CO.

It is hereby stipulated that the deposition of John E. De Witt and E. R. Seccomb may be taken before Fred. V. Chase, a notary public in the city of Portland and State of Maine, instead of before Josiah H. Drummond, Jr., to whom a dedimus has been already issued.

It is also stipulated that the cross-interrogatories hereto attached may be attached to the said dedimus, and the said John E. De Witt and E. R. Seccomb required to make answer thereto, the clerk of the circuit court having failed to attach the said interrogatories to the said dedimus, though the same were on file.

All informalities in taking this deposition are hereby waived, together with notice and affidavit required by statute.

Compl't reserving the right to object to the interrogatories and answers on the hearing for immateriality, incompetency, or irrelevancy or because not responsive.

W. S. HARBERT, *Sol. for Complainant.*
SWETT, HASKELL & GROSSCUP,
Sol's for Defendants.

330 *Deposition.*

The deposition of John E. De Witt, of Portland, of the county of Cumberland and State of Maine, a witness of lawful age, produced, sworn, and examined upon his corporal oath on the fourth day of May, in the year of our Lord one thousand eight hundred and eighty-five, at the office of the Union Mutual Life Insurance Company, in the city of Portland, in the county of Cumberland and State aforesaid, by one Fred. V. Chase, a notary public in and for the county of Cumberland and State of Maine, duly chosen by stipulation hereto attached instead of Josiah H. Drummond, Jr., a commissioner duly appointed by a *dedimus potestatum* or commission issued out of the clerk's office of the circuit court of Cook county, in the State of Illinois, bearing teste in the name of Henry Best, Esq., clerk of said circuit court, with the seal of said court affixed thereto, and directed to the said Drummond as such commission, for the examination of the said John E. De Witt, a witness in a certain suit and matter in controversy now pending and undetermined in said circuit court, wherein Elizabeth —— is plaintiff and The Union Mutual Life Insurance Company is defendant, in behalf of the said Union Mutual Life Insurance Company, as well upon the cross-interrogatories of the plaintiff as upon the interrogatories of the defendant, which were attached to said commission and upon none other.

The said JOHN E. DE WITT, being first duly sworn by me as a witness in the said cause previous to the commencement of his examination to testify the truth as well on the part of the plaintiff as the defendant in relation to the matters in controversy 331 between the said plaintiff and defendant as far as he should be interrogated, testified and deposed as follows:

Interrogatory 1st. State your name, age, occupation, and place of business.

Answer to first interrogatory. John E. De Witt; forty-five; president of the Union Mutual Life Insurance Company, Portland, Maine.

Adjourned to May 5th, 1885, 10 a. m.

F. V. C.

MAY 5TH, 1885—10 a. m.

Met according to adjournment.

F. V. C.

Int. 2d. Do you know the parties to this suit, and what relation, if any, do you bear to them or either of them?

Answer to 2d Int. I am president of the Union Mutual Life Insurance Company. I am not, to my knowledge, acquainted with the plaintiff, Elizabeth Kirchhoff. Years ago I met Julius Kirchhoff.

Int. 3. How long and in what capacity have you been connected with The Union Mutual Life Insurance Company, the defendant in this cause?

Ans. to 3d Int. I have been president of the company since July, A. D. 1876.

Int. 4th. State, if you know, what, if any, business relations the complainant, Julius Kirchhoff, or his wife, Elizabeth Kirchhoff, have had with the Union Mutual Life Insurance Company.

332 Ans. to 4th Int. I know of no relations except as borrowers of money of the company secured by a mortgage of real estate.

(Int. 5th. What, if any, agreement was made with the said complainants relative to a settlement of the indebtedness of said complainants to the defendant by which the said indebtedness should be canceled?)

Int. 5th. If you say that the complainants borrowed money of the Union Mutual Life Insurance Company, giving a mortgage therefor, state fully the history of the transaction.

Ans. to 5th Int. The loan was made before my connection with the company. I find by reference to the real estate and mortgage book of the company that a loan of sixty thousand dollars was made on May 8th, A. D. 1871, to Elizabeth Kirchoff and others, and that L. D. Boone, S. S. Boone, and William Hansborough was named as trustees in what, I presume, was a trust deed; and I find also that as additional collateral security there was a note of one Redeling for $1,500, the payment of which was conditioned upon the title of other property being made good to him, out of which we finally collected $920, and from this amount we paid six dollars for abstract of title and credited the next to the account of the mortgage.

Int. 6th. What, if any, agreement was made with the said complainants relative to a settlement of the indebtedness of said complainants to the defendant by which said indebtedness should be cancelled? 333

Ans. to 6th Int. An agreement was made to take all of the property mortgaged, except one tract of a few acres, and cancel the debt.

Int. 7th. State, if you know, what relation Robert B. Kendall and E. A. Wanfield bore to the Union Mutual Life Insurance Company and during what time did such relations exist?

Ans. to 7th Int. When I was elected president Mr. Wanfield —

employed in the insurance agency department, and, as I recollect, in the fall of A. D. 1876, was transfer-ed to Chicago to look after our real estate and mortgage loans under a written contract, the original of which is lost, a copy of it being, as I understand, in the hands of our counsel at Chicago. I believe that it was in the summer of A. D. 1880 that we dispensed with his services. Kendall was employed at the time I was elected president at the home office to look after the legal matters of the company, and was transferred to Chicago to perform the same duties about the same time that Warfield was. His services were dispensed with by the company in January, A. D. 1881.

Int. 8th. State, if you know, the scope of the authority of the said R. B. Kendall and E. A. Warfield to make trades, contracts, and agreements in regard to the real estate of the Union Mutual Life Insurance Company in Cook county, Illinois.

334 Ans. to 8th Int. They had no authority to make trades, contracts, or agreements for our company.

Int. 9th. State, if you know, what the instructions of the defendant were to the said Robert B. Kendall and E. A. Warfield in regard to reporting the business done by them to the defendant.

Ans. to 9th Int. Their instructions were to report all propositions made to them relative to our real estate and real-estate loans to the home office for the consideration and decision of the finance committee.

Int. 10th. What was the custom of the said E. A. Warfield and Robert B. Kendall in regard to making such reports?

Ans. to 10th Int. It was their custom to follow their instructions, as stated above.

Int. 11th. Was it the custom of the company, upon receiving the said report, to instruct the said E. A. Warfield and Robert B. Kendall in relation to the matter therein contained?

Ans. to 11th Int. It was.

Int. 12th. Had or had not the said E. A. Warfield and Richard B. Kendall authority from the said company to complete negotiations in regard to the settlement of mortgages or to sale of real estate belonging to the company without submitting said negotiations to the said defendant?

Ans. to 12th Int. They had not.

335 Int. 13th. Did you or either of you ever authorize the said E. A. Warfield or the said Robert B. Kendall to make any arrangement for the redemption of the property involved in this suit by the said Kirchhoff?

Ans. to Int. 13th. I did not, and Mr. Seccombe ceased to be superintendent of loans Aug. 1st, A. D. 1878, which I believe antedates the claim of the plaintiff in this suit.

Int. 14th. What proportion of the time did you spend in the city of Chicago between the year 1876 and the — 1881?

Ans. to Int. 14th. I cannot answer exactly, but I think that fully a year of that time was spent in Chicago.

Int. 15th. During such visits to Chicago did you frequently see

Julius Kierchhoff or his wife, the complainant in this cause, and talk with them in relation to their indebtedness to the defendant?

Ans. to 15th Int. I probably saw Julius Kerchhoff three or four times. I do not recollect ever having seen Mrs. Kirchhoff. I talked with Mr. Kirchhoff about paying off the mortgage.

Int. 16th. During such conversations what, if anything, was said by the said Kirchhoff or by you or by the said Robert B. Kendall or the said E. A. Warfield in your presence with relation to an agreement for the redemption of the property involved in this suit by the Kirchhoffs?

336 Ans. to 16th Int. I have no recollection of having any conversation with either of the Kierchoffs about an agreement for such redemption, nor have I any recollection of discussing the matter in the presence of the Kierchoffs and either Kendall or Warfield, or of our being present when it was discussed by Kendall and Warfield or either of them with the Kerchoffs.

Int. 17th. Did you frequently have conversation with the said E. A. Warfield and Robert B. Kendall with relation to the indebtedness of the said Kirchhoff to the defendant? If so, what, if anything, was said at such conversation with relation to an agreement entered into by them as agents for the defendant for the redemption by the Kirchhoffs of the property involved in this suit?

Ans. to 17th Int. I had frequent conversations with Warfield and Kendall about the Kirchhoff indebtedness, but never any conversation with relation *or* agreement entered into by them as agent for the defendant for the redemption of the property involved in this suit until after a letter and proposed deed to the Kirchhoffs had been sent by Kendall to the company and declined by them.

Int. 18th. State when it first came to your knowledge that the said Warfield and the said Kendall or either of them had made or pretended to have made an agreement as agent of the said company for the redemption by the Kierchhoffs of the said property.

337 Ans. to 18th Int. It first came to my knowledge by a letter dated November 1st, A. D. 1879, from said Kendall enclosing a proposed deed to the Kirenhoffs which the company declined to execute.

Int. 19th. Do you know any other matter or thing of benefit or of advantage to the defendant in the above-entitled cause? If so, state the same as fully and explicitly as though expressly interrogated in relation thereto.

Ans. to 19th Int.—

(Adjourned to May 6th, 10 a. m. F. V. C.)

(May 6th, 10 a. m., met according to adjournment. F. V. C.)

I know that neither Mr. Kendall nor Mr. Warfield had any authority to bind the company in any way in connection with their real estate or real-estate loans in Chicago. They were only authorized to receive propositions from parties and forward them to the company for the consideration and decission of the finance committee of the company, and after such decission to carry out the instructions they received from the company in regard thereto.

Cross-interrogatories and Answers Thereto by the Witness on the Part of the Plaintiff.

338 Cross-int. 1st. Please state, if you know, whether or not E. A. Warfield held himself out or was held out by the company as the financial agent of the company for the Northwest.

Ans. to cross-int. 1st. I understand that he held himself out as the financial agent of the company at Chicago, and the company considered him as their financial agent, as stated in answer to interrogatories 7th and 19th.

Cross-int. 2nd. Did not R. B. Kendall hold himself out or was he not held out by the company as its general legal adviser and the manager of its legal business in the Northwest?

Answer to cross-int. 2nd. We do not know how Mr. Kendall held himself out. We considered him our general legal adviser in Chicago, as more fully appears in my answer to interrogatory 19th.

Cross-int. 3rd. Please attach to your deposition as exhibits the printed portion of the style of letter-heads used by E. A. Warfield and Robert B. Kendall, respectively, while they were in the employ of the defendant company.

Ans. to cross-int. 3rd. I attach them herewith, marked "Exhibit A, F. V. C., May," "Exhibit B, F. V. C., May," "Exhibit C, F. V. C., May."

EXHIBIT A, F. V. C., May.

Union Mutual Life Ins. Co., No. 133 La Salle street, room 15;
339 E. A. Warfield, financial agent.

CHICAGO, ILL., *Jan. 29th*, 1877.

Union Mutual Life.

GENTLEMEN: President's favor of 24th inst. relative to loans 1729 & 1826, Pettingill, received.

Will say that the interest due on these loans was paid the 23d inst., the day after I wrote you concerning the same. Referring to Sup't Secomb's letter of 23d inst. in regard to our letter-heads, will say that I have had the "financial department" cut off, which takes off the officers' names. Shall I use them as they are or get a new edition? I have only 500 sheets of each size.

Yours truly, E. A. WARFIELD, *Ag't.*

EXHIBIT B, F. V. C., May.

Union Mutual Life Insurance Co., 133 La Salle street, room 15.

John E. De Witt, president; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

CHICAGO, ILL., *Feb. 4th*, 1878.
2, 6, '78.

340 EXHIBIT C, F. V. C., May.

Union Mutual Life Insurance Company.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

No. 133 LA SALLE STREET,
CHICAGO, ILL., *June 3d*, 1879.
6, 9, '79.

Cross-int. 4th. Did not E. A. Warfield succeed Levi D. Boone as the financial agent of the defendant company in the Northwest.

Ans. to cross-int. 4th. I have already stated the scope of Mr. Warfield's authority in my answer to previous interrogatories. He did not have the authority that Boone had.

Cross-int. 5th. Did the defendant company, at the time E. A. Warfield was in the employ of the company, have any one as its financial agent at Chicago other than said Warfield?

Ans. to 5th cross-int. I was there at times. Daniel Sharp, the vice-president of the company, was there from time to time, and E. R. Seccumb, for a time superintendent of loans of the company, was there occasionally. All of us, when there, gave special attention to the financial affairs of the company in Chicago.

341 Cross-int. 6th. Was not Daniel Sharp vice-president and a director of the company for some years previous to his death, and did he not during the period the Kirchhoff business was pending visit Chicago several times in relation to the company's business at Chicago?

Ans. to 6th cross-int. Yes.

Cross-int. 7th. If you say you were frequently in Chicago while Mr. Warfield was the financial agent of the company, please state whether or not you had frequent interviews with him while you were in Chicago, and whether or not you and he conferred together with respect to the business of the company, and whether or not in such conversations you gave him directions thereto.

Ans. to 7th cross-int. I was frequently in Chicago while Mr. Warfield was in the employ of the company. I had frequent interviews with him in Chicago during such times and advised with him about the real estate and mortgage loans of the company and gave him directions in *er*gard thereto, but always subject — the directions of the financial committee, already expressed, or to their subsequent approval.

Cross-int. 8th. Please state specifically any and all conversations you may have had with Elizabeth Kirchhoff that you remember, when and where the same occurred, and who were present.

342 Ans. to cross-int. 8th. I have no recollection of having ever seen the lady.

Cross-int. 9th. Are you familiar with the correspondence between the home office and the Chicago office pertaining to the Kirchhoff business?

Ans. to 9th cross-int. I am.

Cross-int. 10th. Please state which of the following answers are made upon your own knowledge and which upon information, and, if a portion is made upon your own knowledge and a portion upon information, please specify which part is made upon your own knowledge and which upon information.

Ans. to 10th cross-int. They have been answered of my own knowledge and belief, except so far as I have referred to the books and correspondence of the company for data.

Cross-int. 11th. Have you- answers or any of them to the interrogatories and cross-interrogatories been prepared for or dictated to you or have you been furnished with a copy of such interrogatories or cross-interrogatories or any of them prior to answering same?

Ans. to 11th cross-int. I never saw the interrogatories or cross-interrogatories or any copy of the same until I commenced to give my deposition. No one has prepared any of my answers or dictated them to me.

JOHN E. DE WITT.

343 I, Fred. V. Chase, of the county of Cumberland and State of Maine, a notary public in and for said county, duly appointed to take the deposition of the said John E. De Witt, a witness whose name is subscribed to the following deposition, do hereby certify that previous to the commencement of the examination of the said John E. De Witt as a witness in the suit — the said Elizabeth Kirchhoff, plaintiff, and the said Union Mutual Life Insurance Company, defendant, he was duly sworn by me, as such notary public, to testify the truth in relation to the matters in controversy between the said Elizabeth Kirchhoff, plaintiff, and the said Union Mutual Life Insurance Company, defendant, so far as he should be interrogated concerning the same; that the said deposition was taken at the office of the Union Mutual Life Insurance Company, in the city of Portland, in the county of Cumberland and State of Maine, commencing on the fourth day of May, A. D. 1885, and adjourning from day to day till the same was completed, to wit, May 6th, A. D. 1885, and that after the said deposition was taken by me as aforesaid the interrogatories and answers thereto, as written down, were read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent, John E. De Witt, before me, the oath being administered by me as notary public as aforesaid at the place and on the day and year last aforesaid, and that said deposition was retained by me until sealed up and directed to the clerk of the circuit court of Cook county, Illinois. 344

Portland, May 6th, 1885.

[NOTARIAL SEAL.] FRED. V. CHASE,
Notary Public in and for Cumberland County.

Magistrate's fees, $25.00.

STATE OF MAINE, }
Cumberland, } *ss:*

CLERK'S OFFICE, SUPERIOR COURT,
PORTLAND, *May 8th*, 1885.

I, A. A. Dennett, clerk of all the judicial courts within and for said county of Cumberland (being courts of record), do hereby certify that Fred. V. Chase is, and at the date of his certificate to the paper hereto annexed was, an acting notary public within and for the county of Cumberland, as appears by the paper hereto annexed; that he is duly commissioned and qualified to administer oaths and take acknowledgments of deeds and other instruments in writing in the county aforesaid, and that the foregoing signature purporting to be his is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said superior court for said county the day and year first above written.

[SEAL.] A. A. DENNETT, *Clerk.*

345 Also the deposition of Edward R. Seccomb in words and figures following:

Deposition of Edward R. Seccomb.

The deposition of Edward R. Seccomb, of West Newton, in the county of Middlesex and Commonwealth of Massachusetts, a witness of lawful age, produced, sworn, and examined upon his corporeal oath, on the twenty-ninth day of September, in the year of our Lord one thousand eight hundred and eighty-six, in accordance with the stipulation hereunto annexed, at the office of the Union Mutual Life Insurance Company, in the city of Portland, in the county of Cumberland and State of Maine, and at the office of F. V. Chase, in said Portland, county and State last aforesaid, to which place the court of the commissioners was adjourned by consent of J. H. Drummond, Esq., and W. S. Harbert, Esq., counsel of the respective parties, then and there present, by me, Fred. V. Chase, notary public, a commissioner duly appointed by a *dedimus potestatem* or commission issued out of the clerk's office of the circuit court of Cook county, in the State of Illinois, bearing teste in the name of Henry Best, Esq., clerk of the said circuit court, with the seal of said court affixed thereto and to me directed as such commissioner, for the examination of Charles L. Drummund, a witness in a certain suit and matter in controversy and now pending
346 and undetermined in the said circuit court, wherein Elizabeth Kirchhoff is plaintiff and The Union Mutual Life Insurance Company is defendant, on behalf of the said defendant on all interrogatories to be propounded to him orally, both on the part of the said plaintiff and of the said defendant, and none other, it being agreed by the stipulation above referred to and hereunto attached that the deposition of the said E. R. Seccomb should be taken at the same time and before the same officer who shall take the deposition of C. L. Drummond.

The said EDWARD R. SECCOMB, a witness in behalf of the said defendant in the above-named suit, being first duly sworn by me as a witness in the said cause previous to the commencement of his examination to testify the truth, as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between the said plaintiff and defendant so far as he should be interrogated, testified and deposed as follows:

Interrogatories Propounded by J. H. Drummond, Counsel for Defendant.

(Complainant's counsel objects to the taking of any testimony at this time for the reason, amongst others, that the defendant has caused this case to be placed upon the trial calender and the same is liable to be reached for trial before the complainant shall have had an opportunity for meeting this testimony.)

347 Int. 1. What is your name, resident-, age, and occupation?

Ans. Edward R. Seccomb; West Newton, Massachusetts; seventy; not in active business.

Int. 2. Were you connected with The Union Mutual Life Insurance Company, the defendant in this case, from A. D. 1877 to about April, A. D. 1881? If yea, in what capacity?

Ans. I was, as superintendent of loans.

Int. 3. Whether or not, while acting as such, you were in the habit of being at Chicago? If yea, about how often?

Ans. I was. I was there about every two or three months. Would stay longer or shorter; sometimes two or three weeks or more at a time.

Int. 4. Did you know Edwin A. Warfield, then in the employ of the company at Chicago?

Ans. I did.

Int. 5. Did you know Elizabeth Kirchhoff, then of Chicago?

Ans. I did not.

Int. 6. Did you have knowledge of a loan by the Union Mutual Life Insurance Company to Elizabeth Kerchhoff?

Ans. I heard something about it at the time, but I have forgotten the particulars.

Int. 7. What instructions, if any, did you give said Warfield in relation to said loan or to any proceedings in relation thereto?

348 Ans. I do not recollect that I ever gave him any.

(Question and answer objected to.)

Int. 8. What duty, if any, did you have in relation to the foreclosures of mortgages in any method provided by law?

(The counsel hereby stipulate that objections to testimony on account of immateriality or irrelevancy are to be considered as made without being further stated.—F. V. C., magistrate.)

Ans. to 8. I have nothing special to do with the mortgages. The important matters were submitted to the home office by an attorney in the office at Chicago.

Int. 9. What authority, if any, did you have to direct Warfield to make arrangements with parties against whom foreclosure proceedings had been commenced for a compromise or a waiver of foreclosure proceedings or of their legal *a*ffect?

(Objected to as not the best evidence.)

Ans. I had no authority except that which I received in such cases from the home office.

Int. 10. State whether you received any such authority from the home office in relation to the Kirchhoff loan.

Ans. I have no recollection that I did.

Int. 11. Sta*y*e whether you ever gave said Warfield any such authority?

Ans. I have no recollection that I ever did.

Int. 12. What authority, if any, did you give said Warfield
to contract with Kirchhoff that if Kirchoff would execute a
349 quitclaim deed of the mortgaged premises, the defendant
would allow him to purchase his homestead and the Tanner
lot or either of them at an appraisal to be made by James H. Rees?

Ans. I have no recollection of having any conversation with him on the subject.

Int. 13. Can you state whether you ever undertook to give said Warfield such authority in relation to the company's business?

Ans. I say I never did unless I had *au*thority from the home office.

Int. 14. Were you acquainted with Daniel Thorp, of Boston?

Ans. I was.

Int. 15. What position did he hold in the company?

Ans. He was vice-president of the company.

Int. 16. Is he living; if not, when did he die?

Ans. He is not living; I think that he died two years ago.

Int. 17. You speak of receiving instructions from the home office. How did you receive such instructions—from whom?

Ans. From the president.

Int. 18. Did you generally receive such instructions from him orally before going to Chicago or other places where you went on the company's business?

Ans. No, sir; generally by correspondence.

Int. 19. You received instructions frequently before going West,
did you not, with reference to what you should do with re-
350 spect to matters of business pending at the time?

Ans. Very seldom.

Int. 20. Before going to Chicago did you not usually consult with Mr. De Witt, the president of the company, in regard to the business to be attended to there?

Ans. I did.

Int. 21. And in case you received instructions during such consultations from Mr. De Witt with respect to business at Chicago you endeavored to attend to it according to such instructions, did you not?

Ans. Yes.

Int. 22. Please state whether, in persuance of such consultations and instructions, you from time to time, while at Chicago, had interviews with Mr. Warfield, the financial agent at Chicago, and with Mr. Kendall, the attorney at Chicago, and gave them directions as to business.

Ans. I only told them what to do by the advice of the president.

Int. 23. Did you ever receive any instructions with regard to the Chicago business from the financial committee?

Ans. I don't remember that I ever did.

Int. 24. How long have you been connected with the company, Mr. Seccomb, and in what capacities have you been connected with it?

Ans. I have been a director for twenty-five years or more.
351 I attended to their real-estate business and loans in the West for three or four years.

Int. 25. Did you give much attention to the details in settlements which were made by the company or was yours a sort of general supervision of matter?

Ans. It was a sort of general supervision of matters.

Int. 26. Who was the company's financial agent at Chicago during the period that you were acting as superintendent?

A. I think that Dr. Boone was a part of the time.

Int. 27. Who succeeded Dr. Boone?

(Objected to as assuming what is not true.)

Int. 28. When did Dr. Boone cease to have charge, more or less, of the company's business at Chicago?

Ans. I don't remember the date.

Int. 29. Did he resign or was he removed?

Ans. I don't remember.

Int. —. Don't you remember to whom he transferred the business in his hands belonging to the company?

Ans. No; I don't recollect.

Int. 31. Is it not true that after Dr. Boone ceased to be the company's financial agent at Chicago that Mr. Warfield was appointed such, and that circulars addressed to persons holding loans of the company were printed and mailed announcing his appointment as financial agent of the company at Chicago?

352 Ans. I think I remember that; think he was appointed agent; don't know whether financial agent or not; don't remember about the circulars.

Int. 32. How extensive was Dr. Boone's authority?

Ans. His authority came from the president of the company before I was appointed; don't know to what extent. I think it was very general.

Int. 33. Do you not remember that Mr. Warfield was advertised as the financial agent of the company at Chicago and as the sucessor of Dr. Boone?

Ans. That is my impression, but I do not remember the details.

Int. 34. Do you remember what relation Mrs. Diversey had to the Kirchhoff loan?

Ans. I do not.

Int. 35. Do you know how Mrs. Diversey was settled with?

Ans. I do not.

Int. 36. Do you know whether the company ever released to her any property; and, if so, for what consideration?

Ans. I do not.

Int. 37. Do you know the amount of the Kirchhoff loan?

Ans. I don't remember.

Int. 38. Do you remember ever to have heard of any mistake in the description of any property securing the Kirchhoff-Diversey loan?

353 Ans. I do not.

Int. 39. Do you remember to have seen any correspondence from the company's attorney at Chicago, Mr. Kendall, advising the company of the possible invalidity of Mrs. Kirchhoff's paper?

Ans. I don't remember of seeing any of the letters.

Int. 40. Do you remember of ever hearing of Mr. Kirchhoff's bankruptcy?

Ans. I don't remember that I did.

Int. 41. Did you ever know of propositions and counter-propositions between the company and the Kirchhoffs and the Diverseys with relation to the funding of the Kirchhoff loan?

Ans. No; I don't know anything about it.

Int. 42. At the time you were at Chicago is it not true that Mr. Warfield and Mr. Kendall consulted with you in regard to pending matters and advised you of their then situation?

Ans. I believe they did.

Int. 43. Is it not true that this whole matter has largely gone out of your mind?

Ans. Yes, sir.

Int. 44. Then are you able to say that you may not have been fully advised of very many matters pertaining to the loan in question and given many directions in regard thereto which have now wholly passed from your mind?

354 Ans. Many of the facts have passed from my mind, but any directions that I gave in the case were received from the home office.

(Adjourned to meet at this place Thursday, September 30th, at nine o'clock a. m.

F. V. C., *Magistrate.*)

Met, according to adjournment, Sept. 30th.
Adjourned to Oct. 1st, 1886, at nine a. m.

F. V. C., *Magistrate.*

Oct. 1st.—Met according to adjournment.

F. V. C.

Int. 45. What did you do while at Chicago in connection with the company's business?

Ans. Looking at the property and getting valuations of our property.

Int. 46. What else?

Ans. That was the principal thing I went out for, to see what property we had and what it was worth.

Int. 47. Did you examine into the value of the Kirchhoff property?

Ans. The company employed two appraisers for that especial business and we took their report. I made no personal appraisal.

Int. 48. When did you have the first appraisal made?

Ans. I don't remember the date; could find it out, probably, by looking at my books.

355 Int. 49. How many appraisals did you make or have made of the company's property?

Ans. I had but one. Possibly the company had other- aft*re*wards.

Int. 50. Were there or were there not, while you were there, various foreclosures and sales and settlements, in which the company was interested and about which you were consulted by Mr. Warfield and Mr. Kendall?

Ans. I think so.

Int. 51. Can you name some of the more important matters which were pending at that time?

Ans. Can't bring my mind to recall them; my memory isn't so good as it used to be.

Int. 52. Then you are unable to remember, as I understand you, in what matters at Chicago you took an active part, giving Mr. Warfield and Mr. Kendall counsel and direction?

Ans. Well, my memory don't serve me in those matters. I know that they had directions from the home office. I know that the rule was that they should look to the home office for their directions.

Int. 53. Did you meet Mr. De Witt out there f*or*quently?

Ans. Occasionally.

*I*nt. 54. When you were both there, state whether or not consultations were held by all four of you—Mr. Warfield, Mr. Kendall, Mr. De Witt, and yourself—and methods of procedure determined.

356 Ans. Yes; I have no doubt we talked matters over together. I don't know as we met all four together.

Int. 55. Do you remember now what particular matters were talked over and deter*n*ined at those interviews?

Ans. There was several, but I can't particularize them now.

Int. 56. Can you remember whether the Kirchhoff and Diversey matter were among them?

Ans. I think they were, but I had no counsel with them — those matters that I remember.

Int. 57. Are you willing to state that you did not have counsel with them in these matters?

A. No, sir.

Int. 58. Did you also meet Mr. Sharpe in Chicago occasionally?

Ans. Occasionally; not *a*ften.

Int. 59. State whether or not Mr. Sharpe took a more active part in the management of the company's affairs than yourself.

Ans. He gave his attention to the Nebraska loans and matters — his locality while I was in Chicago and other places. He occasionally came to Chicago.

Int. 60. Is it not true that Mr. Sharpe, as vice-president of the company, took a more active part than you, as a director, with regard to Chicago matters generally?

Ans. I don't know as he took a more active part. He had more authority than I had.

Int. 61. State whether or not Mr. De Witt, coming to Chicago
while you were there and leaving you there, gave you direc-
357 tions as to what should be done by you and Mr. Warfeld
and Mr. Kendall concerning the company's business?

Ans. I don't remember of his giving me any special directions as to what to do. I advised with him what I was doing.

Int. 62. Was that true as to what you intended to do as well as with regard to what you had done?

Ans. It was with regard principally to my going to other places to take valuations while he was at Chicago attending to the Chicago business.

Int. 63. Then I understand that Mr. De Witt sometimes relieved you?

Ans. He frequently went out to Chicago with regard to business there.

Int. 64. And when he came, did personally direct all of you?

Ans. Well, he gave his attention to the business and advised with Warfield and the others there, with Mr. Kendall.

Int. 65. Was that control and direction by Mr. De Witt coextensive with the business of the company?

Ans. Well, I don't know to what extent he was with them. I was there only a small part of the time, but the directions that he gave them were supposed to be attended to. He was with them a part of the time. My duties called me elsewhere.

Int. 66. Did he not frequently have Mr. Sharpe in charge of the business there in connection with Mr. Kendall and Mr. Warfield?

358 Ans. I should say not frequently.

Int. 67. You know of Mr. Sharpe's having been there?

Ans. Yes.

Int. 68. And that when he was there he gave Mr. Warfield and Mr. Kendall directions with regard to the company's business?

Ans. I don't know that he did.

Int. 69. You have said that they consulted together. Do you not know that their actions with regard to the company's business was often the result of such consultation together?

Ans. I don't know the nature of their conversation.

Int. 70. Do you remember on what terms the company offered to fund its loans at Chicago?

Ans. I have no recollection.

Int. 71. Was it not true that the company was anxious to get all the old loans which Dr. Boone had placed out of his hands and adopted a rule whereby the old loans would be funded, the *the* interest reduced, and payments of one-tenth annually of the principal and interest accepted in place of the old loan upon making new papers?

Ans. In many cases they made changes to strengthen the loan and secure prompt payment of interest.

Int. 72. Was not the plan adopted substantially as I have stated?

Ans. I don't know to what extent.

Int. 73. Do you remember the basis of sales to mortgagors on partial payments adopted by the company?

359 Ans. I do not.

Int. 74. Do you know whether or not the company adopted the policy in about 1878 of selling or releasing to its mortgagors property included in the mortgages or trust deeds upon ten-year payments at Rees' and Morey's valuation, one-tenth and interest payable each year?

Ans. My memory don't serve me in any such cases.

Int. 75. That is, you don't remember whether such a policy was adopted or not?

Ans. I don't remember. There may have been.

Int. 76. Do you remember what particular instruction, if any, you had in regard to the Kirchhoff business?

Ans. I do not remember.

Int. 77. Do you remember what particular instruction, if any, you gave Mr. Warfield or Mr. Kendall or both in regard to the Kerchoff matter?

Ans. I don't remember of giving them any on that subject.

Int. 78. Are you able to say that you did not?

Ans. I could not swear that I did not, but I have no recollection of doing so.

Int. 79. You are acquainted with the present controversy between the company and Mr. and Mrs. Kirchhoff, are you not?

Ans. I know that there is one, but I don't know what the nature of it is.

Int. 80. Do you remember to have seen the property in
360 controversy—that is, the property known as the Kirchhoff
homestead, consisting of two lots near the water works in
Chicago?

Ans. I may have seen it years ago, but I have forgotten the circumstances.

Int. 81. Would a sale of the company's property at its appraisal value have been considered any concession by the company, provided such sale had been made on the ten-years plan above referred to and the deferred payments had borne interest?

Ans. I am not able to answer that question.

Int. 82. Why not?

Ans. Because I am not sufficiently posted in the matter.

Int. 83. Was it not and has it not always been the policy of the company to realize on its real estate so as to get the same into interest-bearing securities?

Ans. I think it has been so the last few years.

Int. 84. Was it ever the policy of the company, so far as you know, to speculate in real estate?

Ans. I never knew that it was.

Int. 85. Are you not, then, able to say whether or not a sale of a parcel of real estate at its full appraised value on partial payments, the deferred payments drawing interest, would be in accordance with or contrary to the usual policy of the company?

Ans. If we could get more than the appraised value we should not sell it at the appraised value. We had to sell some for less.

361 Int. 86. Would you consider such a sale at its full appraised value a concession?

Ans. I should think it would depend a good deal on the circumstances.

Int. 87. What circumstances?

Ans. It might be worth more money than the appraisal.

Int. 88. However, supposing such sale were at its full value, then would it be any concession?

Ans. I should want to know the fact before I could decide upon that question.

Int. 89. What additional facts should you want to know before answering the question?

Ans. I should want the case explained before I could decide.

Int. 90. When you first went to Chicago who had charge of the company's business there?

Ans. Dr. Boone.

Int. 91. Who accompanied you then?

—. I think it was Mr. Kendall. No; I'll alter that. I think he joined me afterwards.

Int. 92. Can you state about when you first went out there?

Ans. I think it — about 1874 or 1875; am not sure which.

Int. 93. How long did Dr. Boone continue in office as financial agent after you arrived there?

Ans. As near as I can remember, I think that he remained there some months.

Int. 94. Did you continue in Chicago from the time you
362 arrived there first until Mr. Warfield took charge?

Ans. No, sir; I returned to Boston before Mr. Warfield took charge.

Int. 95. Were you there when Mr. Warfield took charge?

Ans. I think that I was there when he was appointed, but this was not at my first visit.

Int. 96. How was the transfer made?

That is to say, did Mr. Warfield take possession of the old office which Dr. Boone had occupied or were the books and papers transferred to some other office which Mr. Warfield occupied?

Ans. I think that Warfield went into the old office and subsequently moved into another.

Int. 97. Did Mr. Warfield have charge of policies, as well as of loans and real estate, or only of loans and real estate?

Ans. Only of loans and real estate, as I understand it.

Int. 98. Do you know what, if any, advertisement or announcement was made of the change from Dr. Boone to Mr. Warfield?

Ans. I do not know.

Int. 99. Do you know how many loans or about how many the company had at Chicago at this time?

Ans. I don't know; could tell if I had my book with me.

Int. 100. Can you approximate it?

Ans. Should think they had as many as fifteen or eighteen hundred.

363 Int. 101. Please approximate the gross amount of the company's loans at Chicago at that time.

Ans. I couldn't do it with any accuracy whatever. I know that one loan that time in the West *were* at least four millions of dollars. It is my impression that more than half of it was in.

Int. 102. Was it not true, therefore, that much of the matter of details relating to the management of such loans was necessarily left with the local financial agent?

Ans. A large portion of it.

Int. 103. Do you remember whether or not you were at the time advised of settlements which were made while you were at Chicago?

Ans. I do not.

EDWARD R. SECCOMB.

And the defendant produced W. B. WRIT as a witness, who, having been first duly sworn, testified as follows:

Direct examination.

By Mr. GROSSCUP:

Q. What is yo*h*r name?

A. W. B. Wirt.

Counsel for complainant objected to the testimony of this witness. Objection overruled, and exception on behalf of the complainant.

364 Q. What is your business?

A. Assistant clerk of the United States court.

Q. Look at the paper I now show you and state whether it is part of the files.

A. Yes, sir; files of the Mutual Life Insurance Company *vs.* Julius Kirchoff *et al.*, in chancery.

Q. What is it?

A. A bill.

Q. The original bill?

A. Yes, sir.

Q. File-mark of what date?

A. July 11, 1878.

Q. Look at that paper and state what it is.

A. That is the answer of Angela Diversy, one of the defendants in the bill; the same case filed November 20, 1878.

Q. Look at these two papers and see what they are.

A. This is an alias subpœna issued the 9th of August, 1878.

The COURT: Against whom?

A. Against Julius Kirchoff and Elizabert Kirchoff, Angela Diversy, and Andrew P. Johnson. This is an original draft of the order of default, dated November 11, 1878.

Mr. GROSSCUP: Default against the Kirchoffs and Mrs. Diversy?

A. Yes, sir.

Q. Look at that paper and state what it is.

A. This is an order of November 16, 1878, for the appointment of a receiver, A. Warfield.

365 Q. What is that?

A. Petition of James R. Page.

Q. What is the substance of it?

A. A petition to attorn to the receiver.

Q. Petition to have whom attorn?

A. The tenante and all persons in possession of said property, filed Oct. 28, 1881.

Q. What is that paper?

A. That is an order entered October 8, 1881.

Q. What it the substance of it?

A. That Julius Kirchoff shall show cause in five days after notice is served upon him directed to the marshall.

Q. What is the paper I now hand you?

A. Answer to rule as to writ of assistance filed in 1881.

Q. Whose answer?

A. Answer of Julius Kirchoff.

Q. What is the paper I now hand you?

A. Writ of assistance.

Q. Writ of assistance for what?

A. Against Julius Kerchoff and other defendants to foreclose a mortgage on the following-described property. (Description of property.)

Q. To assist in doing what; getting possession of what?

A. Getting possession of lots 1, 2, and 3, 10, 11, and 12, in block four.

366 Mr. GROSSCUP: Does that writ of assistance cover this property?

Mr. HARBERT: Yes, sir.

The COURT: What is the date?

A. It was issued the 16th of November, 1881.

Q. What is the paper which I now hand you?

A. A report of the receiver, E. A. Warfield, first account filed September 6, 1880.

Mr. GROSSCUP: It will not be denied that this case was referred to a master to take testimony?

Mr. HARBERT: No.

Mr. GROSSCUP: State what that is.

A. A report of Henry W. Bishop, one of the masters in chancery.

Q. Of what?

A. United States circuit court, a report of the testimony filed July 2nd, 1880.

Q. What is that paper?

A. This is the original draft of an order of default and reference to a master entered the 15th of March, 1880.

Q. What is the paper I now hand you?

A. Draft *and* decree and sale.

Q. Decree and sale of what property?

A. The property described.

Q. I want to know whether it covers this property or not.

Counsel for complainant admits it covers the property.

367 Mr. GROSSCUP:

Q. What is the paper which I now hand you?

A. This is the master's report of the decree and sale.

Q. Under that decree?

A. Yes, sir.

Q. Sold to whom?

A. Sold to the Union Mutual Life Insurance Company.

Q. Can you state the aggregate amount of the sale?

A. $92,000 was all of the sale.

The COURT: What is the date of it?

A. Filed the 29th of October, 1880.

Mr. GROSSCUP: I wish you would turn to lots 2 and 4, in the canal trustees' subdivision, and state what they were sold at.

A. Well, I think they were all sold——

Mr. HARBERT: It is admitted one was sold for $8,000 and the other for $9,000.

Mr. GROSSCUP:

Q. What is that paper?

A. Draft of an order confirming sale on the 24th of December, 1880.

Q. Confirming sale of all the premises mentioned in the bill and in the decree itself?

A. Confirming sale that was reported in the master's report.

Q. What is that paper?

A. This is an order confirming master's deeds January 21, 1882.

368 Mr. GROSSCUP: Now, for the purpose of shortening the record it is admitted here that we have produced papers showing the foreclosure of all the property mentioned in the bill, and that master deeds were issued and duly recorded except as to the forty acres released to Mrs. Diversy. We offer these papers we have identified without any order of reference to them.

Said papers were then offered in evidence and objected to by complainant as irrelevant, immaterial, and incompetent; which objection the court then and there overruled; to which ruling the complainant then and there excepted, and the said papers were then received in evidence and are in words and figures as follows:

It is hereby stipulated that, for the purpose of rendering the record less voluminous, said papers may be omitted by the clerk in making up the record, and that the following stipulated statement of facts may be inserted in said record in lie*u* of said file*d*, namely:

First. That the defendant company filed a bill in the United States circuit court for the northern district of Illinois upon the 11th day of July, 1878, for the purpose of foreclosing the deed of trust from Julius Kirchoff, Elizabeth Kirchoff, and Angela Diversy to Levi D. Boone, dated May 8, 1871, which said deed of trust was given to secure the joint judgment note of said three last-named grantors.
369 Said bill sought to foreclose said trust deed as to *of* all the
property therein mentioned (except that which had been previously released), including the property involved in this suit, namely, lots two (2) and four (4), in block twenty-one (21), in the canal trustees' subdivision of the south fractio*l*al quarter of section three (3), township thirty-nine (39) north, range fourteen (14) east, of the third principal —; that the bill also sought to correct an error in the description of the property in the trust deed belonging to Mrs. Diversy.

Second. August 9th, 1878, an alias chancery subpœna, returnable the first Monday in September, 1878, was issued to all the defendants and service had upon the 10th day of August, as appears by the return of the marshal*l*. It appears by said return that Elizabeth Kirchoff was served by leaving a copy of the subpœna with her husband.

Third. That on the 20th day of November, 1878, Angela Diversy, one of the defendants in said last-named suit, filed her answer in said cause, in which she averred that the loan secured by said trust deed was not made to her, but that she became a party to the notes and trust deed solely as a surety for Julius Kirchoff, and she denied that there was *may* mistake in the description of the premises in the trust deed. She further averred that she was induced to execute said trust deed through the false representation of Julius Kirchoff
that it was to secure $5,000 only, and that the company was
370 aware of the said misrepresentation and of the fact that she
was thereby led to execute the trust deed, and denies that the defendant company have a right to recover from her any greater sum.

Fourth. That on the eleventh day of November, 1878, there was entered an order in said cause reciting that, said Julius Kirchoff, Elizabeth Kirchoff, and other defendants being severally called to appear and make answer to the bill and that none of them appearing, default was taken against them and the bill taken as confessed.

Fifth. That on the 16th day of November, 1878, there was entered in said case an order appointing Edwin A. Warfield receiver of certain of the property described in the trust deed, including the premises in question.

Sixth. That on or about the 6th day of September, 1880, the said Edwin A. Warfield, receiver, filed a written report in said cause, by which it appears that the said Julius Kirchoff paid him rent for the use and occupation of said premises.

It is further stipulated that thereafter the said Edwin A. Warfield, receiver, resigned, and that James R. Page was appointed receiver in said cause.

Seventh. That on the 28th day of October, 1881, the said James R. Page, receiver, filed a petition representing that he had been appointed receiver in said cause; that Julius Kirchoff was in 371 possession of said lots two (2) and four (4) of block twenty-one (21) aforesaid, and that he refused to surrender possession of the same to said receiver or to pay rent therefor. Said receiver prayed for a writ of assistance to eject said Julius Kirchoff from said premises.

Eight-. That on the 28th day of October, 1881, the court entered an order upon said Julius Kirchoff to show cause within four days why he should not surrender possession of said premises to said receiver.

Ninth. That on the 16th day of November, 1881, said Julius Kirchoff filed an answer to said rule; which answer is set out in the record immediately following the testimony of E. A. Warfield.

Tenth. That on the 16th day of November, 1881, the said court issued a writ of assistance directi*on* the marshal*l* to put said James R. Page, receiver, into possession of said premises.

Eleventh. That on the 17th day of January, 1880, the bill in said cause was amended, making Eben F. Runyan, of the State of Nebraska; Robert E. Jenkins, assignee in bankruptcy of said Runyan, and George W. Stanford parties defendant, and that on the 15th day of March, 1880, an order of default was taken against said last-named defendant and the case referred to Henry W. Bishop, master in chancery, to take proof.

Twelfth. That said master in chancery took testimony in said cause, and that on the second day of July, 1880, he filed his report, in which he found that the allegations of the bill were true and recommended a foreclosure of said deed of trust.

372 Thirteenth. That on the 30th day of August, 1880, there was entered in said cause a decree confirming said master's report and ordering said master to make a sale of the entire premises covered by said deed of trust, except such parcels as had been theretofore released to Mrs. Diversy and others.

Fourteenth. That on the 29th day of October, 1880, the said master filed in said cause his report that in pursuance of said decree he did on the 20th day of October, 1880, make a sale of said premises as described in said decree; that the highest bid at said *d*ale was by the complainant for the sum of $92,000, and that there remained unsatisfied under said decree the sum of $1,027.24; that said property was offered and struck off in separate parcels, the whole aggregating $92,000, and that said lot two (2) above described was bid in for $9,000, and said lot four (4) for the sum of $8,000.

Fifteenth. That on the 24th day of February, 1881, there was entered in said cause an order confirming said master's sale.

Sixteenth. That on the twenty-first day of January, 1882, the time for redemption having expired, the said master made deeds to said complainant of the various tracts of land embraced in said deed of trust, including the premises in question.

Seventeenth. That on the 21st day of January, 1882, there was entered in said cause an order *appointing* said master's deeds.

373 And the defendant thereupon produced **Edwin A. Warfield** as a witness, who, having been duly sworn, testified as follows:

Direct examination.

By Mr. Grosscup:

Q. You were formerly receiver in the foreclosure suit of the Union Mutual Life Insurance Company against Julius Kirchoff and others?

A. I was receiver for a certain period.

Q. I hand you what Mr. Writ says is your original report as such receiver. Do you recognize it?

A. I do.

It was admitted that an amendment was filed in the Federal court in the foreclosare suit January 17, 1880.

And the defendant thereupon read in evidence the deposition of one Charles L. Drummond, which is in words and figures as following:

Deposition of Charles L. Drummond.

The deposition of Charles L. Drummond, of Portland, *of* the county of Cumberland and State of Maine, a witness of lawful age, produced, sworn, and examined, upon his cor*l*oral oath, on the twenty-ninth day of September, in the year of our Lord one thousand eight hundred and eighty-six, in accordance with the stipulation hereunto annexed, at the office of the Union Mutual Life Insurance Company, in the city of Portland, in the county of Cumberland and State of Maine, and at the office of F. V. Chase, 374 in the city of Portland, county of Cumberland and State of Maine, to which place the court of the commissioner was *adjoined* by consent of Hon. Josiah H. Drummond and W. S. Harbert, Esq., counsel of the respective parties, then and there present, by me, Fred. V. Chase, a notary public, a commissioner duly appointed by a *dedimus poiestatum* or commission, issued out of the clerk's office of the *c*ircuit court of Cook county, in the State of Illinois, bearing teste in the name of Henry Best, Esq., clerk of the said circuit court, with the seal of said court affixed thereto, and to me directed as such commissioner, for the examination of the same Charles L. Drummond, a witness in a certain suit and matter now in contr*i*versy, now pending and undetermined in the said circuit court, wherein Elizabeth Kirchoff is plaintiff and The Union Mutual Insurance Company i*d* defendiant, in behalf of the said defendant, as well upon the cross-interrogateries of the plaintiff as on the interrogatories of the defendant propounded to him orally and upon none others.

The said **Charles L. Drummond**, being first duly sworn by me as a witness in the said cause, previous to the commencement of his examination, to testify the truth as well on the part of the plaintiff as the defendant in relation to the matters in controversy between the said plaintiff and defendant so far as he should be interrogated, testified and deposed as follows:

375 *Interrogatories Propounded by Hon. Josiah H. Drummond, Counsel for Defendant.*

(Complainant's counsel objects to the taking of any testimony at this time for the reason, amongst others, that *that* the defendant has caused this case to be placed upon the trial calendar, and the same is liable to be reached for trial before the complainant shall have had an opportunity for meeting the testimony; and also, in so far as this deposition seeks to introduce in evidence letters and other instruments in writing, it is objected to because the copies of such instruments in writing are not the best evidence, and because there is no sufficient evidence to charge the complainant with knowledge of their contents nor evidence showing that such instruments, so far as they are letters, were written by or on behalf of the party purporting to subscribe to them, nor that they were sent to or received by the party or parties to whom they purport to be addressed, and are otherwise immaterial, irrel*a*vant, incompetent, and secondary.)

(Counsel for the respective parties stipulate that the last above objection may apply to all questions and answers in this deposition.)

F. V. C.

Interrogatories Propounded by Hon. Josiah H. Drummond, Counsel for Defendant.

376 Int. 1. What is your name, residence, age, and occupation?

Ans. Charles L. Drummond; Portland; forty-two; clerk of the Union Mutual Life Insurance Company.

Int. 2. In what department?

Ans. I have charge of the real-estate and mortgage department.

Int. 3. Who has the custody of the correspondence, papers, and documents relating to that department?

Ans. I do.

Int. 4. Have you examined the files, letter books, papers, and documents for all correspondence, reports, papers, and documents relating to the Kirchoff loan? If yea, can you produce them?

Ans. I have and I can.

Int. 5. Please examine the paper herewith handed you and state what it is.

Ans. This is an agreement between Edwin A. Warfield and the Union Mutual Life Insurance Company.

Int. 6. Please read it.

(It is hereby stipulated by the counsel of the respective parties that instead of reading said agreement and having same copied at length by the magistrate in answer to the last above interrogatory *that* a copy thereof may be annexed to this deposition as an exhibit, marked "Exhibit 1, F. V. C.," such exhibit, however, to have no further force as evidence than and to be subject to the same objections as the answer called for would be subject to if this stipulation had not been made. This stipulation is intended to relate to all questions and answers in this deposition calling for or purporting to give the contents of written instruments. 377

F. V. CHASE, *Magistrate.*)

Ans. I now here present a copy of said agreement, to be annexed to this deposition as an exhibit, marked "Exhibit 1, F. V. C."

Int. 7. Please examine the paper I now hand you, state what it is, and present a copy thereof to be attached to this deposition as an exhibit.

Ans. It is an agreement between Robert B. Kendall and the Union Mutual Life Insurance Company. I now here present a copy of said agreement, to be annexed to this deposition as an exhibit, marked "Exhibit 2. F. V. C."

Int. 8. Please examine the paper I now show you, state what it is, and present a copy thereof to be attached to this deposition as an exhibit.

Ans. It is a power of attorney from the Union Mutual Life Insurance Company to Robert B. Kendall. I now here present a copy of said power of attorney, to be annexed to this deposition as an exhibit, marked "Exhibit 3, F. V. C."

Int. 9. Do you find any other agreement or copy of an agreement between the company and Mr. Warfield?

Ans. I find no original. I find this paper, which I hereunto annex, marked "Exhibit 4, F. V. C." I have not compared it with any original and personally know nothing about it. 378

(The introduction of this paper is further objected to because it does not purport to be even a copy of any original.)

Int. 10. Is there any document purporting to be an agreement either with said Warfield or said Kendall other than the one here produced on the company's files or anywhere else to your knowledge?

Ans. No, sir; not to my knowledge. I have spent nearly two weeks in search for papers connected with the Kirchoff loan. I have made strict search everywhere they should be or would be likely to be, and have exhausted the search.

Int. 11. Who, if you know, was J. H. Gallery, and what was he doing?

Ans. To the best of my knowledge he was a clerk for Robert B. Kendall and Edwin A. Warfield.

Int. 12. Have you examined in like manner the files and archeives of the company for the correspondence and letters to the company from all persons acting for the company which relate to the Kirchoff loan? If yes, will you produce them?

Ans. I have, and herewith produce them and annex hereto copies in accordance with the above stipulation. In some cases portions of letters, &c., not relating to the Kirchoff loan are omitted, and the omission is indicated by stars.

379 These exhibits are marked "Exhibit 5" to "Exhibit 109," inclusive, "F. V. C."

Int. 13. Have you in like manner examined the files and archeives of the company for all documents and papers of every kind and the letter books giving letter-press copies of all letters going from the company from its home office to persons in Chicago and relating to the Kirchoff loan? If yes, will you produce them?

Ans. I have, and I herewith produce them and annex copies of the same to this deposition as exhibits, marked "Exhibit 110 to Exhibit 167," inclusive, "F. V. C."

Cross-interrogatories and Answers Thereto by the Witness on the Part of the Plaintiff.

Interrogatories propounded by W. S. Harbert, Esq., counsel for plaintiff:

Int. 14. Please state the names of the several officers under which the defendants transacts its business.

Ans. President, secretary, assistant secretary, cashier, and board of directors. The cashier may not be an officer.

Int. 15. What department are you connected with?

Ans. The real-estate and mortgage department.

Int. 16. How long have you been connected with that department?

Ans. Most of the time since August, 1882.

Int. 17. Of what do your duties mainly consist?

Ans. I have charge of the books relating to the real estate 380 and mortgages and of the correspondence connected with the same and the custody of all the deeds and mortgages and of all the papers relating to this department.

Int. 18. Who was your predecessor?

Ans. John Wain.

Int. 19. Have you, as being in charge of the real-estate and mortgage department, any discretionary power with respect to removing paper?

Ans. No, sir.

Int. 20. Has the company now or has it ever had, to your knowledge, any superintendent of loans?

Ans. It has none now and has never had, to my own knowledge.

Int. 21. Has the company now or has it ever had a superintendent of real estate?

Ans. It has none now and has never had one, to my own knowledge.

Int. 22. What body under the charter and by-laws of the company is vested with the management of its affairs?

Ans. I don't know, sir.

Int. 23. From whence do most of the orders respecting its management emanate?

Ans. I can tell you only as to the real-estate and mortgage department.

Int. 24. Do you not know whether, as a matter of fact, orders generally eminate from the board of directors, from the finance
381 committee, or from the president concerning the general
management of the affairs of the company? If so, state which.

Ans. Generally from the president, as far as I know.

Int. 25. Did you personally have anything to do with the Kirchoff loan?

Ans. No.

Int. 26. Do you personally know anything about it?

Ans. No.

Int. 27. Do you know, except as you have learned from others, who had to do with said loan?

Ans. I know only as I have learned from others and from the books and correspondence in the office.

Int. 28. Were there not, in addition to the letters which you have produced, other papers termed reports which related to the Kirchoff loan and which are on file in the company's office or entered of record in the books of the company?

Ans. None except such as I have already presented copies of here.

Int. 29. Can you and will you furnish a statement, to be attached to your deposition as an exhibit, showing any monies received by the company from what is known as the Kirchoff homestead, either from Kirchoff or any one else since the company took possession thereof?

Ans. I will endeavor to do so and attach it as an exhibit, marked "Exhibit 168, F. V. C."

382 Int. 30. In your examination for letters relating to the
Kirchoff loan, have you searched for or attached any letters or copies of any letters purporting to have been written by Elizabeth Kirchoff, the plaintiff, or Julius Kirchoff, her husband, or by Mr. Seccomb or by Mr. Sharp to the company?

Ans. My search for letters in this case has been for all letters written to or by the company in regard to this loan, without regard to who they were from or to.

Int. 31. Please state specifically how your correspondence is docketed or indexed, if at all, so that you are enabled to determine subsequently what particular letters relate to any particular subject-matter.

Ans. Letters relating to the real-estate and mortgage department are docketed. Each loan has a number. Every letter received by or written by the company in regard to that loan is docketed under its number, giving the date, from whom, and to whom, and the substance of the letter.

Int. 32. Who has charge of the docketing of the letters and papers pertaining to the Kirchoff loans?

Ans. The party who had charge of the department for the time being. I do not know who that was.

Int. 33. How many clerks have you in your department?

Ans. Since I have been here only one besides the chief. I don't know how many before that time.

Int. 34. Then, I understand you, your examination was
383 confined to a search for such letters and other instruments
as were docketed to the Kirchoff loan, and you do not know who or how many persons made up that docket, nor when it was made up?

Ans. That is true only as to the letters. I do not know who, nor how many persons made up that docket, nor when it was made up.

Int. 35. Under the method which was in vogue at the time the Kirchoff loan was being foreclosed or settled, would letters written by officers of the company at Chicago to the president here be filed and docketed here, if you know?

Ans. I have no doubt that they would have been.

Int. 36. Please state how E. A. Warfield was described on the letter-heads used at that time by him.

Ans. As I remember, "E. A. Warfield, financial agent."

Int. 37. Will you please attach a letter-head of the sort you referred to to your deposition as an exhibit?

Marked 169, F. V. C.

Ans. I will.

Int. 38. Do you know of a circular issued about the time Mr. Warfield was appointed financial agent, announcing the fact? If so, and you can, will you please attach an issue of such circular to your deposition as an exhibit?

Ans. I do not of my own knowledge. If I can find one I will attach it. I have never seen one.

Int. 39. Please state whether or not Mr. John E. De Witt, president of the company, is now here present in Portland.
384 Ans. He has been through the day.

Int. 40. Had the company, so far as you know, any other financial agent than E. A. Warfield in Illinois at the time said Warfield was its financial agent at Chicago?

Ans. I have no knowledge about it anyway. The books and papers, so far as I know, discloses no other.

Int. 41. What relation are you to the Mr. Drummond who appears as *as* counsel for the defendant company in the taking of this deposition?

Ans. Brother.

Redirect Interrogatories and Answers Thereto by the Witness on the Part of the Defendant.

Interrogatories propounded by Hon. Josiah H. Drummond, counsel for the defendant.

Int. 42. From what person or body of persons in the company do the authority and instructions come to your department in relation to making, removing, or extending of loans, the discharge or foreclosure of mortgages, and the writing of real estate?

Ans. From the finance committee through the president.

Adjourned to Thursday, Sept. 30th, 1886, at ten o'clock a. m.

F. V. CHASE, *Magistrate.*

SEPT. 30TH, 1886.

Met at ten o'clock a. m. according to adjournment.

Adjourned to Oct. 1st, 1886, at nine o'clock a. m.

385 F. V. CHASE, *Magistrate.*

OCT. 1ST, 1886.

Met according to adjournment.

Adjourned to Oct. 2d, 1886, at ten a. m.

F. V. C.

OCT. 2D, 1886.

Met according to adjournment.

F. V. C.

Recross-interrogatories and Answers Thereto by the Witness on the Part of the Plaintiff.

Interrogatories propounded by W. S. Harbert, Esq., counsel for plaintiff.

Int. 43. Please give date and date of record of the master's deed to the company in this case, and give the heading of letters attached as exhibits which show Mr. Warfield as financial agent, and also state on each exhibit whether the same is taken from an original letter or from some copy or record or copy of record.

Ans. The books in the company's office do not give the date asked for. I have searched the files of the company in the home office and do not find the deed referred to. I will give the copies of letter-heads asked for; also state from what taken.

Adjourned to Oct. 4th, 1886, at ten o'clock a. m.

F. V. C.

Met according to adjournment, Oct. 4th, 1886.

F. V. C.

386 Additional Ans. to Int. 43. Would say in addition to my answer to Int. 43 that I have given the copies of letter-heads asked for in all cases where I could find them in the office of the company.

CHARLES L. DRUMMOND.

I, Fred. V. Chase, of Portland, of the county of Cumberland and State of Maine, a commissioner duly appointed to take the depositions of the said Edward R. Seccomb and the said Charles L. Drummond, the witnesses whose names are subscribed to the foregoing depositions, do hereby certify that previous to the commencement of the examination of the said Edward R. Seccomb and the

said Charles L. Drummond as witnesses in the suit between the said Elizabeth Kirchoff and the said Union Mutual Life Insurance Company, defendant, they were duly — by me, as such commissioner, to testify the truth in relation to the matters in controversy between the said Elizabeth Kirchoff, plaintiff, and the said Union Mutual Life Insurance Company, defendant, so far as they should be interrogated concerning the same; that the said depositions were taken at the office of the Union Mutual Life Insurance Company, in the city of Portland, county of Cumberland and State of Maine, at *at* my office, in said Portland, to which place the court of commission was adjourned by consent of the counsel for the respective parties,
then and there present, on the twenty-ninth day of September,
387 A. D. 1886, in accordance with the stipulation hereunto an-
nexed, and that after said depositions were taken by me, as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witnesses respectively, and that thereupon the same were signed and sworn to by the said deponents, Edward R. Seccomb and Charles L. Drummond, before me, the oath being administered by me, as such commissioner, at my office, to the said Edward R. Seccomb, October 1st, A. D. 1886, and to the said Charles L. Drummond, October 4th, A. D. 1886, and that said depositions were retained by me until sealed up and directed to the clerk of the circuit court of Cook county, in the State of Illinois, at Chicago.

FRED. V. CHASE,
[SEAL.] *Notary Public, Commissioner.*

STATE OF MAINE, }
Cumberland, } *ss*:

RECORDER'S OFFICE,
MUNICIPAL COURT, CITY OF PORTLAND.

I, Edwin L. Dyer, recorder of the municipal court, city of Portland, within and for the county of Cumberland, in said State (being a court of record), do hereby certify that Fred. V. Chase is a notary public in and for the State of Maine, duly qualified to act as such:
that his term of office commenced on the twenty-eight day of
388 February, A. D. 1883, and will expire on the twenty-eight
day of February, A. D. 1890, and that the signature purporting to be his is genuine to the best of my knowledge and belief.

In testimony whereof I have hereu*p*to set my hand and
[SEAL.] affixed the seal of the said municipal court this seventh
day of October, A. D. 1886.

EDWARD L. DYER, *Recorder.*

EXHIBIT 1, F. V. C.

Form 164.

Union Mutual Life Insurance Company of Maine.

This agreement made this 21st day of February, A. D. 1878, by and between the Union Mutual Life Insurance Company of Maine, party of the first part, and Edwin A. Warfield, party of the second part: Witnesseth:

That the said party of the first part hereby agree- to employ the said party of the second part at the annual compensation of thirty-five hundred dollars, payable in semi-monthly installments, on the first and fifteenth of each and every month during the continuance of this agreement.

That the said party of the first part further agrees to pay the necessary travelling expenses actually insurred by the said party of the second part, while actually engaged in the prosecution of the
389 business of said party of the first part, away from his place of residence, *while* for the purposes of this contract is known as Chicago, Cook Co. Illinois.

That the said party of the second part hereby agrees to enter the service of the said party of the first part, and to devote his whole time and energies in advancing the interest of the said party of the first part in such manner as may be directed by the officers of said company.

It is further understood and agreed, that if the said party of the second part has at any time held any relation to this company, as agent or subagent, or broker, or otherwise, that the acceptance of this appointment will be understood to be and shall be independ*a*nt thereof, and as an abrogation and annulling of such relation in every respect, and said party of second part shall act as agent solely under this appointment and contract.

Either party hereto may terminate this agreement and the ap*pio*ntment hereunder, unless the same be sooner terminated by death of said party of second part, or by mutual consent, at any time during its continuance, by giving to the other party thirty days' notice in writing, to that effect, and this contract to take effect April 1st, 1878.

In witness whereof the said party of the first part has hereunto in duplicate caused the same to be executed by its president and secr-ary; and the said party of the second part has hereunto
390 in duplicate, set his hand and seal this twelfth day of March 1878.

(Signed) JOHN E. DE WITT, *President.*
E. A. WARFIELD. [SEAL.]

J. P. CARPENTER, *Secretary.*

Sealed and delivered in the presence of—
ALBERT G. MITTON.

EXHIBIT 2, F. V. C.

Form 164.

Union Mutual Life Insurance Company of Maine.

This agreement, made this first day of April A. D. 1878, by and between the Union Mutual Life Insurance Company of Maine, party of the first part, and Robert B. Kendall party of the second part, witnesseth:

That the said party of the first part hereby agrees to employ the said party of the second — at the annual compensation of twenty-five hundred dollars, payable in semi-monthly installments, on the first and fifteenth of each and every month during the continuance of this agreement.

That the said party of the first part further agrees to pay the necessary travelling expenses actually incurred by the said party of the second part, while actually engaged in the prosecution of the business of said party of the first part, away from his place of residence, which for the purposes of this contract is known as Chicago, Illinois.

391 That the said party of the second part hereby agrees to enter the service of the said party of the first part and to devote his whole time and energies in advancing the interest of the said party of the first part in such manner as may be directed by the officers of said company.

It is further understood and agreed, that if the said party of the second part has at any time held any relation to this company as agent or subagent, or broker, or otherwise, that the acceptance of this appointment will be understood to be and shall be independent thereof, and as an abrogation and annulling of such relation in every respect, and said party of second part shall act as attorney and counsellor at law solely under this appointment and contract.

Either party hereto may terminate this agreement and the appointment hereunder, unless the same be sooner terminated by death of said party of second part, or by mutual consent, at any time during its continuance, by giving to the other party thirty days' notice, in writing, to that effect.

In witness whereof the said party of first part, has hereunto in duplicate, caused the same to be executed by its president and secretary; and the said party of second part has hereunto, in duplicate, set his hand and seal, this first day of April 1878.

(Signed) JOHN E. DE WITT, *President.*

J. P. CARPENTER, *Secretary.*

ROB'T B. KENDALL.

Sealed and delivered in presence of—
H. HOWARD BENIDICT.

392 EXHIBIT 3, F. V. C.

Know all men by these presents that the Union Mutual Life Insurance Company, a corporation established by and under the laws of the State of Maine, hereby constitute and appoint Robert B. Kendall, of Chicago, in the county of Cook and State of Illinois, attorney-at-law, their true and lawful attorney for them and in their name and stead to sign, seal, acknowledge, and deliver all such bonds as are required by the State of Illinois to be given by the said company as security for costs and expenses when the said company commences a suit at law in said State for the recovery of property or the collection of any claim or demand arising under mortgages held by said company.

Hereby granting unto him, said attorney, full power and authority *to* their name and behalf to sign, seal, acknowledge, and deliver any and all deeds which he may deem necessary or proper in the premises and otherwise to act in and concerning the premises as fully and effectually as they might do if personally present.

In witness whereof the said Union Mutual Life Insurance Company hereunto set their hand and corporate seal this fourth day of August, in the year of our Lord one thousand eight hundred and seventy-seven, by its president, John E. De Witt, thereunto duly authorized.

393 (Signed) *[UNION MUTUAL LIFE INS. CO.
JOHN E. DE WITT, *Pres't.*] (L. S.)

[Written across the face in red ink:] Revoked and returned by Kendall in his letter of August 20, '77.

Signed and sealed in presence of—
(Signed) H. A. SMITH.

COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

BOSTON, *4th of Aug't*, 1877.

Then personally appeared the above-named John E. De Witt, president, and acknowledged the foregoing instrument to be his free act and deed before me.

(Signed) CHAS. D. ROHAN,
Justice of the Peace.

COMMONWEALTH OF MASSACHUSETTS,
SECRETARY'S DEPARTMENT, BOSTON, *April 14th*, 1874.

I hereby certify that on the thirteenth day of August, 1872, Charles B. RoLan was appointed and commissioned and on the twelfth days of September, 1872, duly received the qualifying codes oath thereunder as a justice of the peace for the county of Suffolk, in the said Commonwealth, for the term of seven years from the date of said commission, and that to his acts and attestations as such fuli faith and credit are and ought to be given in and out of court.

In testimony of which I have hereunto fixed the seal of the Commonwealth.

394 (Signed) OLIVER WARNER,
[L. S.] *Secretary of the Commonwealth.*

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*[Words enclosed in brackets erased in copy.]

EXHIBIT 4, F. V. C.

Memorandum of an agreement made and entered into this 18th day of September, A. D. 1876, by and between Edwin A. Warfield, of Boston, in the Commonwealth of Massachusetts, of the first part, and the Union Mutual Life Insurance Company, a corporation created by the laws of the State of Maine and having an office at Chicago, in the State of Illinois, of the second part.

The said party of the first part hereby agrees qith the party of the second part to act as its agent at Chicago aforesaid for the collection of moneys loaned by it in the State of Illinois aforesaid and for the general management of the affairs of said company in relation to its loans and the securities therefor according to such written instructions as shall be from time to time given to him by said party of the second part or its executive officer, and said second party hereby agrees to pay said party of the first part in full for his services the sum of $416.66 *dollars* a month payable monthly.

This agreement shall continue in full force until thirty days after notice by either party to the other to terminate the same and
395 no longer, and all existing contracts between the parties are hereby abrogated.

(Signed) JOHN E. DE WITT, *President.*
E. A. WARFIELD.

Witness: E. R. SECCOMB.

EXHIBIT 5, F. V. C.

CHICAGO, ILL., *March 3d*, 1877.

Union Mutual Life Insurance Company, Boston, Mass.:

We have no abstract in the following case for foreclosure in court: No. 682, Kirchoff. * * * The Kirchoff deed containes or involves, rather, seven different titles.

The abstract, he says, was burnt up in his office. I had Handy, Simmonds & Co. estimate on labor, and they say new abstracts will cost regular rates—about $1,746.00. They will allow us a discount of 20% in consideration of ordering so many at once. The Kirchoff abstracts make up about $1,000.00 of the $1,726.00.

I see no way of advoiding this expense, but as it is so large I thought I would write for instructions before order- the lot. Our bill of abstracts will be immense.

Yours truly,
(Signed) ROB'T B. KENDALL.

396 EXHIBIT 6, F. V. C.

CHICAGO, ILL., *March* 19, 1877.

U. M. L. Ins. Co., Boston, Mass.:

In reply to letter of the president, 16th inst., relative to loan 682 I have to say that entry of foreclosure, May 26, '76, was an error.

It should have been ordered foreclosed May 26, '76, at which time by reference to Mr. Seecomb's book you will see that he ordered Dr. Boone to foreclose.

I made a mistake in reading his memo. book and entered a memo. on my docket foreclose, &c., in several cases at that time, which I afterwards corrected in part, at least.

I was trying hard at that time to find out the status of cases where papers had been sent away and nothing but a pencil memo. on the envelope to show why or where they were sent.

Very respectfully, &c.,

(Signed) ROB'T B. KENDALL.

EXHIBIT 7, F. V. C.

CHICAGO, ILL., *April 3d*, 1877.

Union Mutual Life Insurance Company.

397 GENTLEMEN: By referring to our dail- statement of yesterday you will find $100 collected on acc't of interest, loan No. 682, Kirchoff and Diversy. I have said to Mr. Kirchoff that it would be necessary for him to pay about $600 per month if he wanted any further time in which to sell the property; that would keep the interest from getting any larger. He seems to think that he can do that by making small payments and he started off with $100 on acc't. I have given him to understand that by paying about $600 per month that the Co. would put off foreclosure proceedings for a time.

Yours truly,

(Signed) E. A. WARFIELD, *Ag't.*

EXHIBIT 8, F. V. C.

CHICAGO, ILL., *April* 25, 1877.

Un*oi*n Nutual Life Ins. Co.

GENTLEMEN: We add to package of papers sent by express this date the following fire-insurance policies:

* * * * * * *

No. 682, Kirchoff & Di*r*ersy, Shoe & Leather, No. 100,628, $1,500.00, April 1st, 1878.

No. 682, Kirchoff & Diversy, Prescott, No. 1605, $1,500, April 1st, 1878.

398 Yours truly,

(Signed) E. A. WARFIELD.
T.

EXHIBIT 9, F. V. C.

CHICAGO, ILLS., *May* 4, 1877.

Union Mutual Life Insurance Company.

GENTLEMEN: Herewith please find fire-insurance policy as follows:

* * * * * * *

682, Kerchoff & Diversy, fire assu., No. 108,344, $3,000, Dec. 13, '77.

* * * * * * *

Yours truly.
(Signed) E. A. WARFIELD, *Ag't.*

Exhibit 10, F. V. C.

Chicago, Ill., *May 9th*, 1877.

Union Mutual Life Insurance Company.

Gentlemen: Referring to loan 682, Kirchoff and Diversy, will say it seems to be rather doubtful about collecting $600 per month from them on acc't of interest. In fact, I have not been able to collect anything since April 2nd last. However, I have not
399 lost sight of the matter.

Yours truly,
(Signed) E. A. WARFIELD.

P. S.— * * *

Exhibit 11, F. V. C.

Chicago, Ill., *May* 12, 1877.

Union Mutual Life Insurance Company.

Gentlemen: Referring to loan 682, Kirchoff & Diversy, will say that Mr. Kirchoff gave me his check today for $200.

The check is dated 18th, and as we cannot deposit it until that day it will not appear in our daily statement until then.

Yours truly,
(Signed) E. A. WARFIELD, *Ag't.*

Exhibit 12, F. V. C.

(Copy.)

Chicago, Ill., *July 5th*, 1877.

Union Mutual Life, Boston, Mass.:

I have had search made for judgments against Kirchoff and wife & mother-in-law Diversy, with the following result:

400	Total am't judg'ts *vs.* Julius Kerchoff.........	$11,015 80
	" " " " Elizabeth Kirchoff... ...	1,952 14

Of the last amount it appears from the records of the recorder's office that $1,583 has been satisfied, although the judg't docket does not show it, which leaves only $369.14.

There are no judgments against Mrs. Diversy, who owned the farm at the time our trust deed was made and who is supposed to own it now.

The title to most of the property was in Elizabeth Kirchoff when the trust deed was given. The total valuation of all the property by Morey was $76,480, and of this amount the lots standing in name of Julius Kirchoff make up the sum of $10,000.

If upon examination no more serious objection to making new papers appears than the judgments against Mrs. Kirchoff they need not stand in the way of making a new deal.

The Kirchoffs could probably satisfy the judgments, but even were we to take title subject to these small amounts it might be better than the present state of affairs.

I hope Kirchoff will get up the abstracts, and if punching up will make him do so I'll see him well punched.

401 It will not be practicable to make new papers to convey the lots standing in the name of Julius Kirchoff on account of the judgment, and probably he don't own them. It will not take long, I think, to have an abstract made of the title to the farm, and it will probably not be very expensive.

Yours truly,

(Signed) ROB'T B. KENDALL.

EXHIBIT 13, F. V. C.

Copy.

Loan 682.

CHICAGO, *July* 10, 1877.

Union Mutual Life Insurance Co.:

I have just had an interview with Kirchoff. He says they are hunting up the old abstracts and he thinks most of them can be found. At any rate, he hopes to find enough to materially reduce the expense. He professes to be highly pleased with the proposition made him and says he will use every endeavor to bring matters to a settlement on the proposed basis. He seems to be in earnest, and I think we are safe in allowing him a reasonable time to get his abstracts.

I will endeavor to get the farm title as soon as possible, but don't want to alarm him by appearing anxious about that particular part of the transaction. The only risk seems to be the death meantime of the old lady.

402 Very resp'y, &c.,

(Signed) ROB'T B. KENDALL.

EXHIBIT 14, F. V. C.

Copy.

Loan 682.

CHICAGO, *Sept.* 18*th*, 1877.

Union Mutual Life Insurance Company, Boston, Mass:

We found so many diverse and adverse interests in the Kirchoff case that it has been impossible to so harmonize them as to effect a settlement on the basis proposed by the pres't when here. Son-in-law Wecker did not advise mother-in-law Diversy to make herself liable a second time for her son-in-law Kirchoff; hence she has declined to do more than sign a $10,000 note, secured by a trust deed on her farm.

This did not seem to Mr. Warfield and myself a sufficient inducement to release her from her liability for over 75,000 on the note we now hold, upon which we could enter up a judgment any day, which would be a valid lien on the farm, whether our trust deed is so or not. Mrs. Diversy acts under the advice of Wicher, and Kirchoff has no influence with her whatever.

We had an interview yesterday with Wick*l*er, at which he said that a $10,000 mortgage on the farm and her release from
403 any further liability was their ultimatum, but when I told him that in that case we should have to enter up judgment *vs.* Mrs. Diversy on our note we thought he exhibited signs of weak*in*ing. He began to refer to a suggestion of mine, made some time ago, for a $15,000 loan on the farm. I think they would give it. I think they are anxious to get Mrs. Diversy released from her liability on the old note, and I suspected from his manner that he did not know until then that we held her judgment note. He told us of some other land she owned, which he said was unincumbered, lying near the farm.

After having alluded to the matter of taking judgment we thought it would be best to clinch the matter by entering it up at once, and I accordingly entered up a judgment against Mrs. Diversy alone for the sum of $75,696.89, principal and interest due, and also for fees and costs, and ordered an execution.

Kirchoff has been through bankruptcy since he gave us that note, although he has not got his discharge. I see from an examination of the case that his discharge was applied for long ago, and that the register reported in favor of it, and that there was no opposition. It would therefore seem that he could get it any day. He is probably unwilling to settle the costs. At the time the note was signed Mrs. Kirchoff had no capacity to make a contract except as
404 to her separate estate on account of her coverture, and I do not think a judgment *vs.* her would hold.

Married women were at that time in this State still under the common-law disabilities as to making contracts (except as I have mentioned). Her trust deed executed with her husband would probably be good, but her note, not being a contract relative to her "separate estate," would not be worth a cent.

Therefore I thought it best to take judg't against the widow Diversy alone.

I think it very likely that the parties will now come to time upon most any reasonable basis. I infer so chiefly from Wickler's manner when I mentioned judgment to him yesterday. At any rate, we have a pretty solid lien on the farm and upon any other real estate of Mrs. Diversy.

Yours resp'y, &c.,
(Signed) ROB'T B. KENDALL.

405 EXHIBIT 15, F. V. C.

CHICAGO, ILL., *February* 11*th*, 1878.

Union Mutual Life Ins. Co.:

* * * * * * *

No. 682, Kirchoff, we find that we have no title to 12 lots in "Knoke and Gardiner's subdivision," which takes $17,380 out of Morey's valuation and $20,000 from Rees' valuation. Otherwise the valuations are correct, except if made now the average reduction would be 15% below the valuations of 1876. * * *

Yours truly,
(Signed) E. A. WARFIELD,
Financial Agent.

G.

(Letter-head of original.)

Union Mutual Life Ins. Co., No. 133 La Salle street, room 15.

John E. De Witt, J. P. Carpenter, E. A. War*f*ield, financial agent; R. B. Kendall, attorney.

406 EXHIBIT 16, F. V. C.

Union Mutual Life Insurance Co., 133 La Salle street, room 15.

John E. De Witt, president; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

CHICAGO, ILL., *Feb'y* 19, 1878.

Union Mutual Life Insurance Co.:

In reply to the pres't's favor of the 13th inst. rel*i*tive to No. 682, Kirchoff, will say that Kirchoff had no title to the 12 lots referred to in my letter of the 11th inst.

Consequently the judgment does not reach them.

Yours truly,
(Signed) E. A. WARFIELD,
Financial Ag't.

SCOTT.

EXHIBIT 17, F. V. C.

Union Mutual Life Insurance Co., 133 La Salle street, rooms 19, 20, 21.

John E. De Witt, president; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

(Copy.)

682.

407 CHICAGO, ILL., *August 9th*, 1878.

Union Mutual Life Insurance Company, 153 Tremont St., Boston:

In reply to that part of the president's favor of the 6th inst. relative to Mr. Rees' appraisal papers on loan 682, will say that all papers relative to that loan are in the hands of Mr. Kendall, to whom above letter has been referred.

The $2.40 referred to we paid Mr. K. for railway and carriage hire in taking Mr. Rees to the premises.

Yours truly,
(Signed) E. A. WARFIELD,
Financial Agent.

G.

EXHIBIT 18, F. V. C.

CHICAGO, ILL., *August 9th*, 1878.

Union Mutual Life Insurance Company, 153 Tremont St., Boston:

I have Mr. Rees' valuation of the lot of land owned by Mrs. Diversy (one of the parties to loan No. 682, Kirchoff), upon which *to* Co. secured a first lien under the judgment recovered *vs.* Diversy, and which land is not included in trust deed No. 682.

408 He valued the land at three hundred dollars per acre ($300), but neither he nor I can tell just how many acres there are, as there seems never to have been any measurements given in conveyance of the land. It was called 20 acres and $\frac{3}{100}$ on the assessor's plat, and there has been a strip 2 chains wide sold off one side. Not knowing the length of the lot, we cannot tell how many acres the strip included; should think, however, there must be 15 acres, at least, remaining.

Meantime there has been a new development in the Kirchoff & Diversy matter. I have been notified that an old suit which was *thought* by the administratrix of one Johnson against Michael Diversy (the husband of Mrs. Angela Diversy) in 1861, and which has been pending in the courts ever since, has lately been decided in favor of the complainant and against the adm'x of Diversy's est., and that the claim constitutes a *a* prior lien on Diversy estate to our trust deed. The decree is for nearly $8,000.

Nearly all the property in the Kirchoff and Diversy trust deed was inherited by Mrs. Kirchoff from her father (Michael Diversy) and was set off to her in a partition among the heirs.

The farm was the separate property of Mrs. Diversy and was no part of the estate of her husband.

The estate had not been settled at the time our loan was made, but was formally declared settled in 1873 by the county (probate) court. The decree in the suit above mentioned declares 409 the settlement in 1873 fraudulent so far as the complainant is concerned and reopens it.

I have examined the records of the suit, a copy of which was furnished me by complainant's solicitor. The def't has appealed to the supreme court. The decision was on an appeal from the superior to the appellate court and confirms in substance the decision of the lower court. The decision by the appellate court was remanded Aug. 1st (instant). I never heard of the case before. Our abstracts settlement of the Diversy estate, but nothing relative to this suit. I shall have to examine the matter more thoroughly; but it looks as though we were in a bad position. This, of course, *per*cludes any settlement with Kirchoff and Diversy by deed from them, unless we are willing to take subject to the suit or rather the decree.

Very respt. submitted.

(Signed) ROB'T B. KENDALL.

(Letter-head of original.)

Union Mutual Life Ins. Co., No. 133 La Salle street, room- 19, 20, 21.

John E. De Witt, *P.* president; J. P. Carpenter, secretary;
410 E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 19, F. V. C.

(Copy.)

Loan 682.

SEPT. 24, 1878.

* * * No. 682. Kirchoff.

Filed replication to answer of Diversy.

(Signed) ROB'T B. KENDALL.

EXHIBIT 20, F. V. C.

Rob't B. Kendall, att'y-at-law, room 21 Boone block, 133 La Salle street.

CHICAGO, *October 4th*, 1878.

The Union Mutual Life Insurance Company, Boston, Mass.:

In the trust deed of Kirchoff & Diversy, dated May 8th, 1871, to secure payment of loan No. 682, were included certain lots, to wit, lots 4, 5, 6, 7, 8, and 9, which had been conveyed to Kirchoff in

April, 1870, by one Dorothea Volkman, who, in December, 1870, filed a bill in chancery to inforce a vendor's lien upon said lots for non-payment of purchase-money.

The suit was pending at the time the loan to Kirchoff was made, and the company were chargeable with the notice thereof, and, 411 of course, took the security subject to the result of the suit.

A decree of sale was made by the court in June, 1871, and, persuant to said decree, the lots were sold by a master in chancery and purchased by the said Dorothea Volkman, and deeds were duly executed and recorded conveying the same to him.

Kirchoff and *ux.* afterwards executed a deed to Volkman.

It would seem, therefore, that the company had no lien upon these lots.

Mrs. Volkman has lately requested that a release be executed and delivered to her by Dr. Boone, the trustee named in the trust deed, and President De Witt, being now here and fully advised in the premises, has consented to its being done.

A release has accordingly been prepaired, and Dr. Boone has executed the same.

Please make a note of the above on your records.

I am, yours very respectfully,

(Signed) ROB'T B. KENDALL.

412 EXHIBIT 21, F. V. C.

CHICAGO, ILL., *October* 21*st*, 1878.

Union Mutual Life Insurance Company, 153 Tremont St., Boston:

Responding to president's favor of 4th inst. * * * No. 682. * * * Properties have been valued and the papers are in the hands of Mr. Kendall. * * *

Other matters will receive attention.

Yours truly,

(Signed) E. A. WARFIELD,
Financial Agent.
G.

(Letter-head of original.)

Union Mutual Life Ins. Co., No. 133 La Salle street, rooms 19, 20, 21.

John E. De Witt, president; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 22, F. V. C.

(Copy.)

Loan 682.

413 CHICAGO, *Oct.* 24, 1878.

No. 682. Kirchoff, Oct. 4, wrote H. O. about having released lots 4, 5, 6, 7, 8, & 9. See letter.

(Signed) ROBERT B. KENDALL, *Att'y.*

Exhibit 23, F. V. C.

Robert B. Kendall, counsellor-at-law, room 21 Boone block, 133 La Salle street.

Chicago, *October 26th*, 1878.

The Union Mutual Life Insurance Company, Boston, Mass.:

I have your favor of the 23rd inst. to hand, and, as requested, hand you valuation papers as under * * * loan 682, Kirchoff. Original valuation inclosed * * *

I am, yours very respectfully,

(Signed) ROB'T B. KENDALL.
J. W.

Exhibit 24, F. V. C.

(Copy.)

Loan 682.

Oct. 31, 1878.

* * * Oct. 22 sent to Co. warranty deed, Diversy to Co.

414 (Signed) R. B. KENDALL.

Exhibit 25, F. V. C.

Chicago; Ill., *Nov. 8th*, 1878.

Union Mutual Life Insurance Company, 153 Tremont St., Boston, Mass.:

Referring to letter of pres't, Nov. 5, by "F. N.," #682, I regarded as a suggestion rather than a request as to having land surveyed, mentioned in your letter of Aug. 4th ult., and as I couldn't see any particular use in going to the expense of surveying Mrs. Diversy's land, upon which we had merely a judgment lien, about which nothing could be done at present, and as we knew pretty nearly how much land there was, I have not thought it expedient to go to the expense of a survey. However, if my course in the matter is not approved, I will order a survey.

In regard to the judgment of $8,000 *vs.* the adm. of Diversy's est., the def'ts have appealed to the supreme court of this State, and the case — still pending. Meantime we have only to wait and let the parties fight it out, and then fight plaintiff (if she wins) when she tries to satisfy her decree out of our property, or compromise, as may then seem best.

* * * * * * *

415 (Letter-head of original.)

Union Mutual Life. Ins. Co., No. 153 La Salle street, rooms 19, 20, 21.

John E. De Witt, president; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 26, F. V. C.

CHICAGO, ILL., *November 22d*, 1878.

Union Mutual Life Insurance Company, 153 Tremont St., Boston:

I send you be express today the sworn valuation by Rees, Morey, and myself of the company's property situated in the State, which report is contained in 26 pages.

* * * * * * *

I also send a report of valuations made on certain lands, which you will find contained in twenty-nine pages. The farm which is held in No. 682, Kirchoff, is not valued. Mr. Rees figures on this being $20,000, which I think is too high.

* * * * * * *

So far as the real-estate report is concerned, will say that the company has the benefit of a careful consideration as to the value given.

416 In my opinion, some of the outside property is valued a little too high. * * *

Respectfully submitted.

(Signed) E. A. WARFIELD,
Financial Ag't.
G.

(Letter-head of original.)

Union Mutual Life Ins. Co., No. 133 La Salle street, rooms 19, 20, 21.

John E. De Witt, president; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 27, F. V. C.

CHICAGO, ILL., *Nov. 30th*, 1878.

Union Mutual Life Insurance Company, 153 Tremont St., Boston:

Enclosed please find valuation papers, loans No. 150, No. 682, and No. 730, called for in president's favor of 14th inst.

Yours truly,

(Signed) E. A. WARFIELD,
Financial Agent.
G.

417 (Letter-head of original.)

Union Mutual Life Insurance Co., 133 La Salle St., rooms 19, 20, 21.

John E. De Witt, president; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 28, F. V. C.

CHICAGO, ILL., *December* 14*th*, 1878.

Union Mutual Life Insurance Company, 153 Tremont St., Boston:

Please honor my demand draft of this date, $585.93, to the order of D. G. Hamilton, on account of Chicago taxes, the same being for four tax deeds to Mr. Sharp, as follows:

* * * * * * *

No. 682. Kirchoff, John Forsythe, and *ux.* to D. S., $45.

* * * * * * *

The above deeds have been delivered to Mr. Kendall, with instructions to prepare deed from Mr. Sharp to the company.

Yours truly,

(Signed) E. A. WARFIELD,
Financial Ag't.
G.

418 (Letter-head of original.)

Union Mutual Life Ins. Co., No. 133 La Salle street, rooms 19, 20, 21.

John E. De Witt, president; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 29, F. V. C.

CHICAGO, ILL., *January* 1*st*, 1879.

Union Mutual Life Insurance Company, 153 Tremont St., Boston:

In reply to favor of vice-pres't of 20th ult. saying the pres't and himself wish me to associate Mr. Sleeper with myself in Mason (1165), Burroughs (730), Campbell (1044), and Kirchoff (682) cases.

* * * * * * *

There has not been much delay in the Kirchoff case, except that Mr. Barber, counsel for Diversy, was running for Congress, and I was obliged, as a matter of courtesy, to grant him a little extra time in which to prepare and file his answer; that has, however, been done, and the case is at issue and will be referred to a master 419 to take proof and report without further delay. If the case then develops great difficulty, I will retain Mr. Sleeper, but in its present stage it seems unnecessary. I have hopes of effecting an amicable settlement and avoid litigation, but have not got such terms from Diversy as to care to submit them to your consideration. Mrs. Diversy's adviser (Wicker) says that it is with her a question of saving something from the property she pledged as security for

Kirchoff's debt, and that if we are not willing to concede anything she might as well fight for what she can get. I think now that an offer on our part to let her keep 40 acres of that farm would induce her to give us a deed of the rest, although she has not said so.

Wickler, with whom I have had several interviews during the last month, offered, in her behalf, to divide the farm betw. us (130 acres). You are, I think, sufficiently informed of the various complications in this matter, so that I need not state them fully. I explained them fully to Mr. Sharp, and have written fully to the company. I think we can maintain our case in court, but we may have a long *seige* of it. Kirchoff would willingly surrender all his property and make an arrangement to buy back his homestead at a liberal price, but I do not dare to settle with him without settling the whole case, as it might prejudice our claim against Diversy. It is rather unfortunate, now, that Boone released part of the
420 security without adequate consideration, thus leaving more than a fair proportion to be satisfied out of the remainder, and we cannot safely take Kirchoff's property for a certain part of the debt and then hold Mrs. Diversy for the bal. It would give cause for complaint on her part, and our idea of the relative value of the different parcels of land might not be sustained by the court.

A receiver of the property has been appointed and the rents will be collected by him. Kirchoff has taken a lease of his own house from the recv. I wrote in my report for November about this case and the matter was referred to the vice-president, then here, but he did not appear to favor a settlement involving any concession on our part, but did not say so decidedly.

Of course any settlement would involve some concessions on both sides.

If it is not thought advisable to negotiate I will give no further thought to the subject, but will push the court proceedings as fast as may be, but I would like a hint of your views in the matter. * * *

Very resp'y,

(Signed) ROB'T B. KENDALL.

421 (Letter-head of original.)

Union Mutual Life Ins. Co., No. 133 La Salle street, rooms 19, 20, 21.

John E. De Witt, president; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 30, F. V. C.

(Copy.)

Loan 682.

CHICAGO, ILL., *January 2d*, 1879.

Union Mutual Life Insurance Company, 153 Tremont street, Boston:

President's favor of 20th ult. to Mr. Rees, Mr. Morey, and myself is at hand and the contents have been carefully noted. I desire to say in regard to the Kirchoff valuation loan 682 that the description to the farm property of 135 acres seems to have been omitted in copying the report, consequently the value of that portion was not given. Mr. Rees and Mr. Morey seem to be firm in their opinion that the 135 acres are worth $20,000.

For myself I cannot consistently say over $13,500 or $100.00 pre acre. Mr. Rees originally valued the Kirchoff property at $83,000. 422 This valuation embraced 6 lots in Knokke and Gardner's subdivision, which is omitted from the last valuation. These lots were valued at $10,000. The farm was then put at $25,000. The valuation of the Kirchoff property except the farm is placed now at $39,100. Mr. Rees and Mr. Morey increased this amount by $20,000 for the farm, making their total valuation $59,100. I should place the farm from present information at $13,500, making the total value of the Kirchoff property $52,600. There has been some property released from the loan since it was made which would reduce the figures somewhat from the original valuation made in 1871.

Yours truly,

(Signed) E. A. WARFIELD.

Exhibit 31, F. V. C.

Chicago, Ill., *Jan. 14th*, 1879.

U. M. L. Ins. Co., Boston, Mass.:

I have Vice-pres't Sharp's favor of the 8th inst., and in reply

* * * * * * *

In regard to settlement of the Kirchoff case, do I understand the vice-pres't to refer to the suit now pending in the supreme 423 court of this State—Johnson *vs.* Diversy—when he speaks of "Mrs. Diversy's suit"? If so I have to say that a settlement such as suggested cannot be made to cover that case, altho' it would cover everything else.

We cannot make Johnson a party to our settlement. That suit, however, does not affect the title to the Diversy farm, which was the separate property of Mrs. Diversy, but does affect the title to all the other land in the trust deed, which was the property of Mr. Diversy, the suit being against his adm'r.

There is a large amount of other property affected by that suit. Mrs. Kirchoff's share was ¼, I believe. If the suit is finally decided in favor of the pl'ff the claim becomes a lien on the whole estate.

Very resp'y, &c.,

(Signed) ROB'T B. KENDALL.

(Letter-head of original.)

Union Mutual Life Ins. Co., No. 133 La Salle street, rooms 19, 20, 21.

John E. De Witt, president; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

424 EXHIBIT 32, F. V. C.

Union Mutual Life Ins. Co., No. 133 La Salle street, rooms 19, 20, 21.

John E. De Witt, president; Daniel Sharp, vice-president; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

CHICAGO, ILL., *January* 14*th*, 1879.

Union Mutual Life Ins. Co., Boston, Mass.:

The pres't will recollect that when he was last in Chicago he handed me a certain promissory note for the sum of $1,500, which had been left by Kirchoff with Dr. Boone as collat*t*eral security for loan # 682, Kirchoff, Diversy, and which had been turned over by Boone to Mr. Warfield, upon which note was an endorsement to the effect that the note was not to become due until an abstract of title has been furnished and the title proved to be satisfactory. I have succeeded in finding the maker of the note, who lives out in the country and is a German. He says he has not yet been furnished with an abstract and his title is not satisfactory.

425 He claim*e*s to have paid out some $600 to clear the land from tax claims and $120 for abstracts, vouchers for which expenditure he exhibited. Kirchoff confirms the statement I have succeeded in getting from Kirchoff one of the abstracts, which cost $80 and was paid for by the maker of the note—Redelings—for which he should receipt. The other, for which he showed receipted bill for $30, I have not got tract of, and don't think I shall. I can get a copy, however, from Handy & Co.

The title comes from the estate of Michael Diversy, and, like all the rest, is subject to the suit now pending against his adm'r. Reddings cl*ia*ms an offset against his note of the money paid out by him as aforesaid, and insists that his title be made satisfactory, which is quite difficult to do, as you will see.

He seems to be a very decent sort of a Dutchman, however, and would like to get up his note if it don't cost too much.

The note bears no interest until after due, and can't become due till the above-mentioned conditions are complied with. I have made so good an impression on him as to have him propose to be governed by my opinion as to his title, but I do not care to act for him to that extent for fear I should find more bad things in the title than he knows of now. He has got some money, he says, and I think I can make a decent sort of a compromise with him if you authorize it, for he don't want any trouble, and would like to take up his note.

426 Shall I make the best terms possible for cash and close the matter?

I think $500 now would be better than to wait until he finds out about that old suit that is pending. He would insist on a settlement of that if he knew of it, but I don't think he does.

Perhaps I can do better; I would not advise taking less. Still, you must remember it is money without interest in its present shape, and we cannot perfect the title with that suit pending.

Resp'y, &c.,

(Signed) R. B. KENDALL.

The land conveyed by Kirchoff to Redelings was never included in our trust deed.

EXHIBIT 33, F. V. C.

CHICAGO, ILL., *January 23d*, 1879.

Union Mutual Life Insurance Company, Boston, Mass.:

I have today settled with Mr. Redelings the matter of his note for $1,500, held by the company*s* as collateral to the Kirchoff loan No. 682, and have cancelled and surrendered the note.

He paid me nine hundred and twenty dollars ($920), out of which I have to pay six dollars ($6) to Handy & Co. for abstract, or, rather, duplicate of part of abs't, which had been lost by
427 Kirchoff or some one else. I have p'd over the am't to Warfield, to be credited on the Kirchoff loan. This is a better settlement than my previous letter led you to expect, and Mr. Warfield and myself think it a very good one.

Resp'y, &c.,

(Signed) ROB'T B. KENDALL.

(Letter-head of original.)

Union Mutual Life Ins. Co., No. 133 La Salle street, rooms 19, 20, 21.

John E. De Witt, president; Daniel Sharp, vice-president; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 34, F. V. C.

(Copy.)

Copied from Kendall's letter book of reports & Co.

Loan 682.

JANUARY 25TH, 1879.

* * * Kirchoff & D.

Jan'y 8.—Letter from pres't about this case.

Jan'y 14.—See Mr. K.'s reply.

Jan'y 14.—Wrote H. O. about Theodore Redelings' note.

Jan'y 23.—Settled with Redelings for $920.
428 Handed cash to Mr. Warfield and note to Mr. Redelings; wrote H. O. result of negotiations. * * *

Respectfully submitted.

(Signed) ROB'T B. KENDALL.

EXHIBIT 35, F. V. C.

(Copy.)

Copied from Kendall's letter book of reports to Co.

Loan 682.

JANUARY 31ST, 1879.

* * * No. 682, Kirchoff. The claim of Johnson, administratrix, against Diversy, administratrix, to which reference has been frequently made in correspondence to the company, was presented this day to the probate court and allowed by consent of Mrs. Diversy as a claim against the estate of Michael Diversy, and an order was entered, persuant to the recent decision of the supreme court, setting aside the former order of the county court discharging the administratrix.

No proceedings have been commenced as yet to subject the real estate to the payment of this claim. When such proceeding shall be commenced we shall take the best measures we can think of to defeat the proceedings. I have come to the conclusion that in this case the Co. ought not to incur any liability until it is forced upon
them, and I have great hope that we will be able to make it
429 exceedingly difficult for them to get the authority of court
to sell any of the company's real estate. * * *

Respectfully submitted.

(Signed) ROB'T B. KENDALL.

EXHIBIT 36, F. V. C.

Loan 682.

MARCH 15, 1879.

* * * March 7 waited on Mr. Beattie, att'y for Chas. Saleman, who secured judgment *vs.* Kirchoff, execution dated Oct. 18, 1876, and marked No. 39 on abstract; also wrote him March 8. Beattie says judgment was satisfied; see also my letter of 21st relative to a settlement. * * *

EXHIBIT 37, F. V. C.

(Copy from letter-press books.)

CHICAGO, ILL., *Aug. 7th*, 1879.

Union Mutual Life Insurance Company:

In reply to letter of 5th inst., asking for list of parties against whom judgments for deficiencies have been obtained, I have the honor to transmit the following list of names and amounts of judgments or decrees:

* * * * * * *

Angela Diversy judg't. 75,704.39.

* * * * * * *

430 To be credited with am't bid at sale under chancery decree (less costs) and am't collect- from Wm. E. Frost on deficiency decree. * * *

I don't think the individual responsibility of any of the foregoing parties is worth ten cents.

Very respectfully, ob't serv't,
(Signed) ROBT B. KENDALL.

Union Mutual Life Ins. Co., No. 133 La Salle street, rooms 19, 20, 21.

John E. De Witt, president; Daniel Sharp, vice-president; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 38, F. V. C.

CHICAGO, ILL., *October 22d*, 1879.

Union Mutual Life Insurance Company, Boston, Mass.:

I beg to hand you herewith the following pap*res*:

* * * * * * *

1. Warranty deed, Angela Diversy to company, loan No. 682 Kirchoff.

* * * * * * *

Yours respectfully,
(Signed) ROBT B. KENDALL.

431 (Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kimball, attorney.

EXHIBIT 39, F. V. C.

CHICAGO, ILL., *Nov.* 1*st*, 1879.

Union Mutual Life Insurance Company:

Among a lot of deeds forwarded from this office today for execution by the company is one to Kirchoff of his "homestead lot," so called, which bears even date with the quitclaim deed given by Kirchoff and wife to the company.

There was an understanding between Mr. Warfield, Kirchoff, and myself that the Co. would sell this lot back to him and allow him to pay for it in installments, but so far as I know the price was not definitely fixed.

The consideration named in the deed I have prep*ai*red is the appraised value by Rees at time we visited all the Kirchoff property over a year ago.

If the company approved of selling to him at that price please execute and return deed and name terms of payment.

432 Kirchoff has expressed a preference for semi-annual payments account principal, but has always objected to paying anything down in cash, and I have always told him that the Co. would not like to sell without a payment in cash on delivery of deed.

So that is an open question as well as the price. He has never been near me since he delivered the quitclaim deed; but Mr. Warfield says he claims now that he was to have the privilege of buying back lot 4 also (Pine St.), but such has not been assented to by me in any way, for I have thought the redemption of his house and lot was as much as he ought to undertake.

In all my conversation with Kirchoff I have avoided fixing a price, but have told him what Rees' valuation was and said I would advise the Co. to reconvey at that price, and I do so advise accordingly.

In the first instance he said he would be willing (in order to make a settlement and get rid of his obligation to the Co.) to undertake the redemption of his homestead at even more than it was worth.

He now wants to include the lot on Pine St., making total consideration $10,000. (So says E. A. W.) I don't think we are under any obligation as to lot 4, even morally; and, as I understand it, we
are under no obligation whatever as to his homestead, except
433 to give him a chance to buy it back on such terms as the Co.
were offering other property—*i. e.*, long-time installment,
low rate of interest.

I don't believe he will pay any cash down, but think he would undertake to make a payment of $\frac{1}{20}$ on the first Apr. next.

I would suggest making him such terms with int. from date of deed and then have him either accep- or decline and end it.

Very resp'y,

(Signed) ROB'T B. KENDALL.

Lot 4 is in demand, and Kirchoff knows there is money in it at the appraised value or at the offer made by Isham some time ago ($3,000).

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 40, F. V. C.

CHICAGO ILL., *Nov. 8th*, 1879.

Union Mutual Life Insurance Company, Boston, Mass.

434 I have the president's favor of the 5th relative to the draft of deed sent by me to the Co. on the 31st *ult.* for conveyance of Kirchoff's homestead lot to Mrs. Kirchoff for $7,000, &c.

I will communicate the Co.'s decision to Kirchoff.

Perhaps the financial committee did well to disregard my advice.

I don't think Kirchoff will purchase, but perhaps he will.

Very truly,

(Signed) ROBT B. KENDALL.

(Letter-head or original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 41, F. V. C.

(Copy.)

Loan 682.

CHICAGO, ILL., *November* 26, 1879.

Union Mutual Life Insurance Company, 153 Tremont street, Boston:

435 I have waited some time in order that I might be able to report the settlement of No. 682, Kirchoff, but cannot do so yet. I saw Mr. Kirchoff a few days since and had him go with me to Mr. Kendall's office, but found Mr. Kendall absent. Mr. K. agreed to meet me at Kendall's office the same afternoon at 4 o'clock and I have not been able to see him since.

He claims that he settled with Mr. Kendall with the understanding that he was to purchase the homestead on the terms submitted some time since by Mr. Kendall, and Mr. Kendall says such is not the case. I have possession of the house under a lease to Kirchoff, but he don't pay rent worth a cent.

Yours truly,

(Signed) E. A. WARFIELD,
Financial Agent.
G.

EXHIBIT 42, F. V. C.

CHICAGO, ILL., *Dec.* 1*st*, 1879.

Union Mutual Life Insurance Company, Boston, Mass.:

I herewith beg to hand you the following deeds, &c.:

* * * * * * *

436 No. 682, 1 quitclaim deed, Julius and Elizabeth Kirchoff to company.

Loan 682, Kirchoff.

* * * * * * *

Yours respectfully,

(Signed) ROBT B. KENDALL.

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 43, F. V. C.

CHICAGO, ILL., *December 6th*, 1879.

Union Mutual Life Ins. Co., Boston, Mass.:

* * * * * * *

In regard to valuations asked for, will say that No. 682, Kirchoff, will not stand more than $55,500. The homestead might stand an advance of $1,000, but I should take that amount from the value placed on lot 4. I think the valuation of October 7th last is all the property can stand.

437 In regard to the tax vouckers called for, will say that Mr. Hamilton brought in $800 worth yesterday, but I did not pay for them, as there were some certificates which did not belong to the company and were taken back for the purpose of correcting the account. These certificates will go forward early in the week.

Yours truly,

(Signed) E. A. WARFIELD,
Financial Agent.
G.

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary.

EXHIBIT 44, F. V. C.

CHICAGO, ILL., *Dec. 8th*, 1879.

Union Mutual Life Insurance Company, 153 Tremont St., Boston:

In reply to president's favor of 5th inst., we have no means of knowing to what part of the Kirchoff property the various items are chargeable, except by the vouchers, which are not in my possession. If you will send all of the vouchers we shall then be able to separate them.

Yours truly,

438 (Signed) E. A. WARFIELD,
Financial Agent.
G.

(Letter-head of original.)

Union Mutual Life Insurance Co., 133 La Salle street, rooms 19, 20, 21.

John E. De Witt, president; Daniel Sharp, vice-president; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 45, F. V. C.

CHICAGO, ILL., *Dec. 9th*, 1879.

Union Mutual Life Insurance Company, 153 Tremont St., Boston:

In reply to that portion of pres't's favor of 5th inst. asking for separate valuations on the Kirchoff property have to say that I consider the relative value to be the same—that is, $1,875.00 *pre* acre.

E., 3.1 acres, $6,000.
B., 12.5 " $9,000.

Yours truly,
(Signed) E. A. WARFIELD,
Financial Agent.

439

G.

(Letter-head of original.)

Union|Mutual Life Insurance Co., 133 La Salle St., rooms 19, 20, 21.

John E. De Witt, president; Daniel Sharp, vice-president; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 46, F. V. C.

Union Mutual Life Insurance Company, 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

CHICAGO, ILL., *Dec.* 12, 1879.

Union Mutual Life Insurance Company:

I forward today by American ex. a copy of the opinion of the supreme court of this State in the suit of Johnson, adms., *vs.* Diversy, adms. (relative to the Kirchoff-Diversy loan, No. 682), about which you have been already informed.

440 The decision affirms the decree of the lower courts, which, you know, was in favor of the complainant, Johnson.

Copy of the decree of the supreme court is embodied in the abstract of the case in the appellate court, which I sent you once for examination and which was returned to me. See pages 12 to 17 of said abstract (printed), which I again forward for your reference.

Interest and costs are added to the amount found due as per decree of superior court, which make the am't of claim now due over $8,000. I have not the exact figures.

Unless the decree is paid proceedings will be commenced in the probate court to sell real estate to satisfy it.

The def'ts see no way to prevent such sale, and Mr. Wichler, who is Mrs. Diversy's son-in-law and who has furnished most of the means for carrying on this suit for her, says he and the other heirs of Diversy (his wife and sisters) are willing to settle and pay their proportion of the claim.

The company represents the entire interest of one of the 4 heirs or ¼ of the estate of Diversy, and if we settle shall have to pay, as I understand, one-fourth of the claim.

The att'ys of Mrs. Johnson want very much to settle right away, as their fees have been largely contingent and they are hungry for their money.

A part of the claim has, I am told, already been paid by Wecker ($1,500).

The att'ys of Johnson would like to know whether or not the company will make a settlement without putting them to the
441 trouble of further proceedings.

I wish you to advise me as to that point, and then, if we are to make an amicable settlement, I will arrange details, &c., and also see if we can get any discount.

I don't see any way of avoiding settlement at some time and it would not be advisable to incur additional expense. The liability seems to be well settled.

Very resp'y, &c.,
(Signed) ROBT B. KENDALL.

If the company prefer not to assume this liability till after 1st Jan'y, I can put them off till then.
(Signed) ROBT B. KENDALL.

Please return the documents as soon as sufficiently examined. The copy of opinion was loaned me.
(Signed) R. B. K.

Exhibit 46, F. V. C.

Chicago, Ill., *December 13th*, 1879.

Union Mutual Life Insurance Company, 153 Tremont St., Boston:

Referring to that portion of president's favor of the 4th inst. relative to No. 682, Kirchoff, will say that the company has a deed to the property, but I understand that foreclosure proceedings are still pending.

I am informed by Mr. Kendall that I can apply whatever
442 moneys are in my hands in this case on account of taxes paid by the company, which I will do at once.

I will close the receiver's account with this property just as soon as I can do so.

Your respectfully,
(Signed) E. A. WARFIELD,
Financial Ag't.
W.

(Letter-head of original.)

Union Mutual Life Ins. Co., No. 133 La Salle street, rooms 19, 20, 21.

John E. De Witt, president; J. P. Carpenter, secretary; E. A. Warfield, financial secretary; R. B. Kendall, attorney.

EXHIBIT 47, F. V. C.

CHICAGO, ILL., *Dec. 23d*, 1879.

Union Mutual Life Insurance Company, 153 Tremont St., Boston:

As appears in our daily statement, the receiver has paid the company for 2 tax items on the Kirchoff property, amounting, with cost, to $230.50.

443 Please send the vouchers, $114.45, $2.87 costs, and $110.42, $2.76 costs.

Yours truly,
(Signed) E. A. WARFIELD,
Financial Ag't.
G.

(Letter-head of original.)

Union Mutual Life Insurance Co., 133 La Salle street, rooms 19, 20, 21.

John E. De Witt, president; Daniel Sharp, vice-president; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 48, F. V. C.

(Copy.)

Loan 682.

DECEMBER 31ST, 1879.

* * * Nov. 8th.—Filed for record deed from Kirchoff and wife to company. Received a letter from company in reply to mine of Oct. 31st, saying finance committee decline to sell Kirchoff his homestead for $7,000, but will sell for $8,400; ¼ cash, balance in 20 equal payments, at 6% interest.

Nov. 17th.—Received letter from company, saying this matter must be fixed up before the end of the year.

444 Dec. 1.—Sent to company a quitclaim deed from Kirchoff and wife to company.

Dec. 12.—Sent home office a copy of opinion of supreme court in suit of Johnson *vs.* Diversy, together with abstract of the evidence and the decree of the court, with letter of explanation.

Received reply from Vice-President Sharp, dated Dec. 23d, saying that the opinion is returned by express and requesting me to lay it before President De Witt for his examination when in Chicago during Mr. De Witt's visit to Chicago.

I submitted the above-mentioned matter to him with such explanation of the situation that was then enabled to give, but no definite conclusion was reached as to the cause to be pursued by the company. Report.

Since then I have made further and more complete investigation of the matter, the report of which I embodied in a letter to the company on the 10th day of Jan'y, and asked for instructions, to which I have received reply, saying that the vice-pres. would be in Chicago in the course of a week or 10 days, and that I should refer the matter to him.

Respectfully submitted.

(Signed) ROB'T B. KENDALL.

445 EXHIBIT 49, F. V. C.

CHICAGO, ILL., *January 5th*, 1880.

Union Mutual Life Insurance Company, Boston, Mass.:

Referring to your favors of the 5th and 17th ult. in reference to the certain items of expense that you desire to appear in proper amounts against the different prices of the Kirchoff property, No. 682, I beg to hand you below the information required.

Voucher for $6, p'd Feb'y 3, '79. (Signed) Handy & Co.
Voucher for $10, " June 14, '79. (Signed) E. R. Bliss.
Voucher for $29, " Aug. 9, '79. (Signed) Rob't B. Kendall.
Voucher for 90c., " Nov. 8, '79. (Signed) Rob't B. Kendall.
Voucher for $5, " July 10, '78. (Signed) Rob't B. Kendall.

Each of the five foregoing vouchers refer- to the whole of the Kirchoff property.

Voucher for $5.00, p'd Mar. 16, '78. (Signed) Handy, Simmons & Co.
Voucher for $28.00, " Sept. 20, '77. (Signed) Handy, Simmons — Co.
Voucher for $1.65, p'd Sept. 12, '79. (Signed) Rob't B. Kendall.
Voucher for $17.50, " Sept. 17, '77. (Signed) Rob't B. Kendall.
Voucher for $2.40, " July 29, '78. (Signed) Rob't B. Kendall.

Each of the five last vouchers covers the Kirchoff farm.

Voucher for $88.00, p'd June 3, '78. (Signed) Handy, Sim-
446 mons & Co. On lots 1, 2, 3, 10, 11, & 12, block 4, Knokke &
Gardner's subd'n, &c.

$33.00, order No. 31055. Bl'k 12 & $3\frac{1}{10}$ acres bl'k 3, L. & Diversy, &c.

$38.00, order No. 31051. Lot 26, bl'k 28, sec. 5, 39, 14.

Voucher for $244,
pa. Fed'y 22, '78.
(Signed) Handy, Simmons & Co.

$40.00, order No. 31052.
Lot 10, bl'k 64, original town.
$85.00, order No. 31053.
Lots 2 & 4, bl'k 21, *L.* W. ¼, 3, 39, 14.

$48.00, order No. 31054. Lot 3, in bl'k 53, Kinzie's add'n.

Voucher for $153.40, p'd March 14, '78. (Signed) John N. Young. Lots 2 & 4, in W. part of bl'k 21, in canal trustees' subd'n of S. frac. ¼ sec. 3, 39, 14.

Voucher for $70c., p'd March 14, '78. (Signed) Rob't B. Kendall. Covers lot 3, in (except S. E. cor.) bl'k 53, Kenzie's add'n to Chic.; also lots 3, 10, & 11, bl'k 4, in Knokke & Gardner's subd'n of 20 acres N. and adjoining the S. 30 acres of W. ½ of N. W. ¼ sec. 28, 40, 14.

Voucher for 65c., p'd June 5, '79. (Signed) Rob't B. Kendall. Covers lots 1 & 2, bl'k 4, Knokke & Gardner's sub. of part of W. ½ of N. W. ¼ sec. 28, 40, 14.

447 Voucher for $60–100, p'd Aug. 25, '79. (Signed) R. B. Kendall, by J. W. Covers lots 2 & 4, in W. ½ of bl'k 21, in canal trustees' sub. of S. pacl. ¼ sec. 3, 39, 14 E.

Voucher for $20.00, p'd Sept. 17, '77. (Signed) Rob't B. Kendall. Covers lots 2 & 4, bl'k 21, S. E. 39, 14; also lot 26, Rose's subd'n E. ½ bl'k 28, canal trustees' subd'n, in sec. 5, 39, 14; also farm in T. 42, 13.

Voucher for $17.40, p'd Sept. 20, '77. (Signed) J. H. Gallery. Covers lot 3, Buttler's subd'n of N. E. ¼ bl'k 53, Kinzie's add'n to Chi.; also lot 10, bl'k 64, original town.

Voucher for $1.00, p'd June 11, '78. (Signed) Rob't B. Kendall. Covers farm in T. 42, 13 E.

With reference to these vouchers relating to taxes, it will not be necessary for me to send description, as the property is described in full on each tax voucher.

Yours respectfully,
(Signed) E. A. WARFIELD, *Fin'l Ag't.*
W.

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P.
448 Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 50, F. V. C.

(Copy.)

Loan 682.

CHICAGO, ILL., *January* 10*th*, 1880.

Union Mutual Life Insurance Company, 153 Tremont street, Boston:

In the matter of the suit of Johnson against Diversy to establish a claim against the administratrix of Michael Diversy, through whom title to most of the land described in the Kirchoff and Diversy trust deed, No. 682, is derived, I have to report as follows: The attorneys for Mrs. Johnson have been pressing me for a final decision as to what course the company will take in this matter, and I have put them off from time to time in order to make more investigation in the case than I have hitherto been able to do.

The amount of the decree entered by the superior court Oct. 9, '77, is $7,612.00, to which sum should be added interest at the rate of 6% per annum to the present time or to date of payment of the decree, whenever that may be.

Interest computed to this date amounts to $1,027.62, which makes the total claim $8,639.62.

449 As the trust deed to Dr. Boone conveyed substantially a quarter in trust in the real estate left by Diversy, it is insisted by the attorney for Mrs. Johnson that the company should assume and pay ¼ of the amount of the decree, with interest. Something also has been said about our paying a part of the expense of litigation, but they do not seem disposed to insist upon that. Upon payment of one-quarter of this amount, to wit, $2,159.90, they purpose to release all the property in which the company is interested from any further liability, and I am informed that arrangements have been made with Mr. Weckler, the husband of one of the Diversy heirs, who still retains a large interest in the property, to pay the balance of the claim, and undertake to indemnify themselves by contributions from the owners of the other half of the property.

Part of the Co.'s security has been released from time to time, so that we don't now represent ¼, but would have a claim on the land released for an equitable contribution, I think.

It is a well-settled princip*al* of law that heirs (including, of course, those claiming through them) are not liable for the debts of their ancestors where the latter leave personal estate sufficient to discharge all just debts, and so forth, and that it devolv- on those seeking to charge the heir with ancestors' debts to prove either that 450 there was no personal estate or that it was insufficient to pay the just demands against his estate.

It has also been held by courts that if the estate has been wasted and destroyed by the administrator he and his sur*i*ty are liable to the extent of the waste and not the land of the heirs, even if both administrator and sur*i*ty are both insolvent.

The supreme court, in the case now under discussion, found that at the time the administratrix closed her account she held 1,160 shares of the capital stock of the Lill Chicago Brewing Co., par value $100, and that the proofs showed that said shares of stock were of amply suff*u*cient value to pay and satisfy this decree, and that she kept and retained in her possession over $15,000 (to wit, said stock) of personal assets, which the court found she had ever since held, and that all the other debts of Diversy have been paid.

I have made a careful examination of the records of the probate court of this county in the matter of administration on the estate of Diversy and find that the administrator's final account shows that she had $2,411 in cash and 1,280 shares of said stock, but that she

distributed the money and the stock among the 4 heirs and herself. While this was, under the circumstances, a misapplication of the assets, still the question arises as to whether the company, representing in its ownership of land one of these heirs, can ob-
451 ject to the distribution of the funds or whether they are estopped, having received (constructively) the benefit of such distribution.

Unless some such estoppel exists it would seem that the company would have a right to insist that the land cannot be held for this claim, but that the remedy of the complainant is against the administratrix and the surities on account of the waste committed by her, and that, even though the complainant in this case can subject the land to the payment of the claim, the company ought to have its remedy against the administratrix and her sureties for any loss occasioned by the misapplication of the assets of the estate.

The attorneys for Mrs. Johnson, however, say that in the event they have to resort to proceedings in the probate court for the sale of real estate they will select some of the land in which this company is interested out of which to satisfy the whole decree, leaving the Co. to indemnify itself be inforcing contributions from the owners of the real estate.

I suggested to Mr. Weckler that, inasmuch as it appeared that the administratrix had wrongfully distributed 1,280 shares of said stock (part of which I suppose are still within the control of some of them), a quarter of said stock, to wit, 320 shares, might be transferred to the company, and that the company might thereupon assume
452 and pay a quarter of this decree (the stock being substantially the only assets available at the time of distribution), and he has the matter under consideration.

The value of the stock consists in about 475 feet of land at the extreme easterly end of Chicago avenue, on the north side.

There were 5,000 shares of this stock originally, of which amount 155 shares have been cancelled and retired, leaving 4,845 shares of stock still outstanding.

I cannot learn that they have any other property, and Mr. Weckler says that there are now outstanding liabilities on this land.

Therefore the value of the stock depends entirely on the value of the land. At $75 per foot the land would make the stock worth $7 a share, which would fully indemnify the company for the payment of one-quarter of the decree.

Mrs. Johnson's att'ys propose to commence proceedings forthwith in the probate court to subject the real estate to sale unless we come to terms without further delay. I had hoped to be able to send with this a definite answer from Weckler to my proposition reltive to the transfer of stock, but have not been able to find him today.

The chief objection I see in allowing them to proceed in the probate court as they proposed is that in the event they succeed
453 in getting a decree for sale of the land they will probably satisfy their whole claim out of the company's land and leave the company to indemnify itself by inforcing contributions against the other owners, as I have already mentioned; and, further, that

any protracted litigation would rest as a cloud on the title pending the suit.

I dislike very much, however, to submit to the payment of any part of this claim without making a rigorous resistance to it, as I think there is an even chance at least of defeating them.

I don't know that I can state the matter any more fully or clearer without being "too long-winded."

Please consider the matter and advise me as early as possible. I have spent a large part of my time for several days in studying this case.

Very respectfully,
(Signed) ROB'T B. KENDALL, *Att'y, &c.*

EXHIBIT 51, F. V. C.

CHICAGO, ILL., *January 13th*, 1880.

Union Mut. Life Ins. Co., Boston:

In reply to a letter written by Mr. Nickerson, but without signature, relating to items charged to the Kirchoff property, have to say:

454 Tax deed (Carbine), $1,000, is on lot 10, B. 64, original town.; tax deed (Haas), $153.40, and tax deed (city), $151.31, cover lots 2 and 4, block 21, C. T. subd'n, in sec. 3, 39, 14; tax deed, $45, & $225 costs, covers lot 12, block 4, Knokke and others' subd'n.

The Gage matter of $2,200 covers all the property, and we have no means of knowing how it should be divided accurately. The vouchers for $110.42 and $114.45, 1878 taxes, were sent the company Oct. 30th, last.

Vouchers for all other items referred to were given Mr. Kendall long ago for use as evidence in the foreclosure suit. The credit of $920 may be applied wherever it will do the most good, as it was the proceeds of a note which the company held as collateral and which was collected by Mr. Kendall. We credited it acc't advances, just the same as though Kirchoff had brought in the money to be applied on acc't.

Yours truly,
(Signed) E. A. WARFIELD,
G., *Fin'l Ag't.*

455 (Letter-head *or* original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

Exhibit 52, F. V. C.

Report.

January 31st, 1880.

* * * * * * *

#682, Kirchoff.

The claim of Johnson, administratrix, against Diversy, administratrix, to which reference has been frequently made in correspondence to the company, was presented this day to the probate court and allowed by consent of Mrs. Diversy as a claim against the estate of Michael Diversy, and an order was entered pursuant to the recent decision of the supreme court, setting aside the former order of the county court discharging the administratrix.

No proceedings have, however, been commenced as yet to subject the real estate to the payment of this claim. When such proceeding shall be commenced we shall take the best measures we can think of to defend the proceedings. I have come to the conclusion that in this case the Co. ought not to assume any liability until
456 it is forced upon them, and I have great hopes that we will
be able to make it exceedingly difficult for them to get authority of court to sell any of the company's real estate.

* * * * * * *

Respectfully submitted.
(Signed) ROB'T B. KENDALL.

Exhibit 53, F. V. C.

(Copy.)

Loan 682.

Chicago, Ill., *February 7th*, 1880.

Union Mutual Life Ins. Co., Boston:

In reply to Pret's favor of 5th inst. relative to rents due and unpaid.

* * * * * * *

No. 682, Kirchoff.

This matter has been placed in an attorney's hands for collection, but I hardly think he will succeed. We shall probably have to get an order from court to put him out.

* * * * * * *

Yours truly,
(Signed) E. A. WARFIELD,
Financial Agent.

G.

457 EXHIBIT 54, F. V. C.

(Copy.)

Loan 682.

FEBRUARY 25, 1880.

* * * February 3, referred matter of claim of Johnston *vs.* Diversy's est. to Vice-Pres't Sharp, as directed by pres't's last letter.

Decided not to settle any part of claim till it is made certain there is no escape from it. Feb'y 20, recorded quitclaim deed D. G. Hamilton to Co. (tax title). No further proceedings on account of the Johnson claim have been had since our last report.

The att'y for Mrs. Johnson tells me that he proposses to leave the matter of collecting the claim for the present in the hands of the administratrix of Diversy, so that any movement looking to the sale of real estate to satisfy claim will be made by Mrs. Diversy herself, in which case we think we will be able to interpose a successful defense. * * *

Respectfully submitted.

(Signed) ROB'T B. KENDALL.

EXHIBIT 54, F. V. C. (Error.)

(Copy.)

Loan 682.

FEBRUARY 25, 1880.

* * * Feb'y 3, referred matter of claim of Johnson *vs.* Diversy's est. to Vice-Pres't Sharp.

[Written across the face:] Error.

458 EXHIBIT 55, F. V. C.

CHICAGO, ILL., *February 28th*, 1880.

Union Mutual Life Insurance Company, Boston, Mass.:

No. 682, Kirchoff, John Forsythe to Dan'l Sharp, lots one and 2, bl'k 4, Knocke — Gardner's sub'n, recorded June 5, '79.

No. 682, Daniel Sharp to U. M. L. Ins. Co., same premises as above, not executed; to be executed and returned for record.

* McGovern.

682 & 1113, Hamilton to Warfield, E. 3.1 acres of block 3 and all of block 12, Lill & heirs of McGovern, Diversy's div'n; S. W. ½ N. W. ¼ 29, 40, 14; also lots 1, 2, 3, 10, and 11, bl'k 4, Knocke & Gardner's sub'n, &c.; also lot 3, in bl'k 53, Kenzie's add'n to Chic., said lots being included in trust deed of Kirchoff & *al.*, $682.00; also, in same deed, lot 8 of sublots 1 to 5 of lots 7 & 8, bl'k 2, & sublot 6 of lots 7 & 8, in bl'k 2, school sec. add'n, being part of the premises described in trust deed of McGovern, No. 1113, never recorded.

---

*[In pencil on margin.]

This deed has been cancelled and deeds given by Hamilton to
the Co. direct in place thereof, viz., a deed of the Kirchoff lots
459 was executed in July last, but was not filed for record till
23d inst.

* * * * * * *

No. 682, city of Chicago to D. G. Hamilton, dated Aug. 1, '79, and recorded Aug. 25, '79, lots 2 & 4, in W. part of block 21, C. T. sub'n of S. frac'l ¼ sec. 3, 39, 14. Have prepared deed from Hamilton to the Co., which he is to execute, and it will be sent to the Co. as soon as recorded. Hamilton made a deed of this to Mr. Warfield last August, but, as it has not been recorded, I thought best now to cancel it and let Mr. Hamilton make one direct to the company in place of it.

No. 682, deed from A. Gage to Hamilton, dated July 8, '78, recorded July 10, '78, lot 3, block 53, Kenzie's add'n, &c.; also lots 3, 10, & 11, in bl'k 4, Knocke & Gardner's sub'n, &c.

A deed from Hamilton to company was executed in July last and was filed for record 2, 23, '80, conveying same premises, and will be forwarded as soon as received from recorder's office.

No. 682, deed from H. H. Gage to Hamilton, dated July 6, '78, recorded July 10, '78, conveying bl'ks 3 & 12, in Lill & heirs of Diversy's div'n, and lots 1 & 2, bl'k 4, Knoke & Gardner's sub'n.

A deed from Hamilton to the Co. has been executed, conveying
the east 3.1 acres of said bl'k 3 and all of block 12, being all the
Co. owns in Lill & Diversy div'n, and lots 1 & 2, in Knocke & Gardner's sub'n, and will be forwarded as soon as recorded.

460 No. 682, County Clerk Klokke to E. R. Haase, dated M'ch
12, '78; recorded Mar. 14, '78; lots 2 & 4, in W. part bl'k 21,
&c.

No. 682, Haase to Warfield, Mar. 12, '78; recorded Mar. 14, '78, same premises.

A deed of same premises was prepared some months ago & delivered to Mr. Warfield for his execution, but it appears upon enquiry that it has not been done.

It will be executed at once and recorded & then sent to the company.

No. 682, deed from Thos. Carbin to Warfield, Nov. 17, '76; recorded November 18, '76; lot 10, bl'k 64, original town.

Warfield deed last above mentioned will also convey to the Co. said lot 10.

No. 682, deed from Hamilton to Sharp, dated June 4, 1879; unrecorded lot 12, in bl'k 4, Knocke & others' sub'n, &c.

The deed herewith enclosed, to be executed by Mr. Sharp, will convey this lot to the company, together with lots 2 & 4, in same sub'n, which are described in deed from Forsythe to Sharp before mentioned. This unrecorded deed should be returned to me for record with the deed of Mr. Sharp.

* * * * * * *

I have sent you the cancelled deeds in order that they can
461 be, if necessary, compared with your records, &c., after which
they better be destroyed, I think.

Some of the property described has been sold and conveyed by the company since date of the tax deed.

In such case the deeds are of use to you only as vouchers. Some of them cover property included in several trust deeds and are not very convenient on that account for filing.

Such explanations have been given as I thought would help in understanding the matters.

If any more tax deeds are missing please advise me. I send these in response to request in the company's recent letter to Mr. Warfield at his request.

He will, I suppose, report if he has any more on hand. Most of the deeds enclosed were filed in my office.

Very respectfully,

(Signed) ROBT B. KENDALL.

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

462 EXHIBIT 56, F. V. C.

CHICAGO, ILL., *March 4th*, 1880.

Union Mut. Life Ins. Co., Boston:

Enclosed please find quitclaim deed, D. G. Hamilton to company (tax title), which has been duly recorded.

Yours truly,

(Signed) ROBT B. KENDALL.

(Letter-head of original.)

Union Mutual Life Insurance Company, 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 57, F. V. C.

CHICAGO, ILL., *March 5th*, 1880.

Union Mut. Life Ins. Co., Boston:

The 60c. for recording Q. C. deed from Hamilton to Co. referred to in pres't's favor of 2d inst. applied to lots 2 & 4, block 21, &c., as was plainly written in Mr. Kendall's voucher.

Yours truly,

463 (Signed) E. A. WARFIELD,

Financial Agent.

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 58, F. V. C.

CHICAGO, ILL., *March* 11*th*, 1880.

Union Mut. Life Ins. Co., Boston:

President's favor of 8th inst. at hand, with papers as stated relative to loans 1655 and 1656, McCoy & Pratt.

The charge of 60c. on No. 682, under date of Feb'y 23, was for recording deed, Hamilton to Co., on E. $3\frac{1}{10}$ acres, block 3, and all of block 12, in Lill & Diversy's sub'n.

Package received by express contained five policies expiring in April, as listed in president's favor of 9th inst.

Yours truly,

(Signed) E. A. WARFIELD,

Financial Agent.

(Letter-head of original.)

464 Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 59, F. V. C.

CHICAGO, ILL., *March* 18, 1880.

Union Mut. Life Ins. Co., Boston:

Enclosed please find quitclaim from David G. Hamilton to company (tax title) of lots 2 & 4, in W. part of bl'k 21, in C. T. sub., &c., being a portion of former security to loan No. 682, Kirchoff.

Yours respectfully,

(Signed) ROB'T B. KENDALL.

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B Kendall, attorney.

465 EXHIBIT 60, F. V. C.

(Copy.)

Loan 682.

MARCH 31, 1880.

* * * March 4, sent to Co. quitclaim deed, Hamilton to Co. (tax title). Received from Co. quitclaim, Hamilton to Sharp, and

recorded same. Mar 15, proof of service of order on Ruanyan and on person in possession, and default and decree *pro confesso* as to Runyan, Stanford & Jenkins, and ref. to mast. March 25, notice of hearing before master for 26th. Mar. 26, attended before master on him; no app. by def'ts; instructed to await return of Dr. Boone as a witness.

I found it was necessary in this case to get a decree of court *on* order to cut off the rights of certain parties under a sheriff's deed covering homestead lot, and also concluded that it would be better, as my pet. prays for a correction of certain errors of description of the farm, to have a decree entered correcting the same; otherwise the record of the court would show that part was abandoned.

Our quitclaim deeds from Mrs. Diversy contain the proper description, but as the proceedings had gone so far in the court, it seems better to have the correction made by the decree. I had fixed upon a day for taking testimony of Dr. Boone in the matter as to
the intention of the parties in making the trust deed, but he
466 was suddenly called away just at that time, and I shall now
have to wait his return.

Respectfully submitted.

(Signed) ROBT B. KENDALL.

EXHIBIT 61, F. V. C.

CHICAGO, ILL., *April 10th*, 1880.

Union Mut. Life Ins. Co., Boston:

Enclosed please find quitclaim deed from J. Edw. Everett to Albert Curtis conveying premises recently purchased by the Co.; also a quitclaim deed from Daniel Sharp to company (tax title), loan 682, Kirchoff.

Yours respectfully,

(Signed) ROBT B. KENDALL.

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financ*ai*l agent; R. B. Kendall, attorney.

467 EXHIBIT 62, F. V. C.

CHICAGO, ILL., *April* 14, 1880.

Union Mutual Life Ins. Co., Boston:

Mrs. Diversy desires to settle tax claim on the part of the farm released to her out of trust deed No. 682, Kirchoff, the company holding certificate of sale on same.

Please therefore forward the tax certificate and receipts, if any, upon that part of the land described in trust deed, situate in township 42.

Yours re'p'y,

(Signed) ROB. B. KENDALL.

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 63, F. V. C.

CHICAGO, ILL., *April 23d*, 1880.

Union Mut. Life Ins. Co., Boston:

Herewith please find the following fire policies:

* * * * * * *

468 682, Kirchoff; 28653, Continental, $2,000; expires April 1, '81.

682, Kirchoff; 15790, Merchants, $1,500; expires April 1st, '81.

682 " 57137, Newark, $1,500; expires Apr. 1, '81.

* * * * * * *

Yours respectfully,

(Signed) E. A. WARFIELD, *Fin'l Ag't.*

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 64, F. V. C.

CHICAGO, ILL., *April* 24, 1880.

Union Mut. Life Ins. Co., Boston:

The charge of $5.12 referred to in vice-pres't's favor of 20th inst. does not belong to any "particular portion" of the Kirchoff property, but to all.

Yours truly,

469 (Signed) E. A. WARFIELD,
Financial Ag't.

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 65, F. V. C.

(Copy.)

Loan 682.

APRIL 30, 1880.

* * * April 10, sent to Co. one quitclaim deed, Sharp to Co. (tax title), lots 1, 2, and 12, B. 4, Knokke and Gardner's sub'n.

April 14, wrote the Co. to forward certain tax vouchers pertaining to the Diversy farm in order to effect a settlement with Mrs. Diversy relative to her redemption of the tax claims held by the Co. of the portion of the land released to her; received tax certificate and receipts enclosed in vice-pres't's letter of the 17th of April; have computed the amount which Mrs. Diversy has to pay, and have notified her through Mr. Weckler and requested him to call 470 and *and* settle. This he has not yet done, although I sent for the papers at his request. * * *

Respectfully submitted.

(Signed) ROB'T B. KENDALL, *Att'y.*

EXHIBIT 66, F. V. C.

CHICAGO, ILL., *May* 8, 1880.

Union Mutual Life Ins. Co., Boston:

Enclosed please find quitclaim deed (tax title) from D. G. Hamilton & wf. to Daniel Sharp (vice-pres't) of property secured to loan 682, Kirchoff, duly recorded.

Yours respectfully,

(Signed) ROB'T B. KENDALL.

P. S.—Deed from Sharp to Co. has been already sent forward.

(Signed) KENDALL.

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

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471 EXHIBIT 67, F. V. C.

CHICAGO, ILL., *May* 28, 1880.

Union Mut. Life Ins. Co., Boston:

In reply to president's favor of 7th inst. relative to 682, Kirchoff, will report that about the time the president was here last I gave the case to Mr. Wheeler and he succeeded in getting $100 out of Kirchoff. Since then the "Best Brewing Co." have closed up Kirchoff's business and he is out of funds and likely to remain so.

I have written Messrs. Kendall & Bliss to get an order from the court to either pay the rent or vacate the premises.

Yours truly,

(Signed) E. A. WARFIELD.

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

472 EXHIBIT 68, F. V. C.

(Copy.)

Loan 682.

MAY 31, 1880.

* * * May 8th, sent to Co. 1 quitclaim deed (tax title) from D. G. Hamilton to Daniel Sharp (V. P.), lot 12, B. 14.

May 28th, received letter from Mr. Warfield as receiver saying he was unable to collect am'ts now due from premises occupied by Kirchoff and requesting that measures be taken to eject him. I shall make application to the court for assistance in this matter as soon as the national convention is over, the court having adjourned during the meantime.

* * * * * * *

Respectfully submitted.
(Signed) ROB'T B. KENDALL, *Att'y.*

EXHIBIT 69, F. V. C.

CHICAGO, ILL., *June 7th*, 1880.

Union Mut. Life Ins. Co., Boston:

Referred to the matter of rent due from Mr. Kirchoff for 473 house on Rush St., have to say he has today paid me $80.00 and promises to pay $60 per month, commencing the 20th inst., until the acc't is squared. I have not much faith in his promises, and had it been earlier in the season would not have accepted the money, but under the circumstances thought best to get the $80.00 and if the $60.00 is not forthcoming on the 20th will immediately proceed to get possession.

Yours truly,
(Signed) E. A. WARFIELD,
Financial Ag't.

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 70, F. V. C.

CHICAGO, ILL., *June 7th*, 1880.

Union Mut. Life Ins. Co., Boston:

Please send with description of the 90 acres in section
474 28, town. 42, and range 13, contained in the deed from Mrs.
Diversy to the Union Mutual Life Ins. Co. which grew out of the settlement with Mrs. Diversy in connection with the Kirchoff matter, loan No. 682. This deed was sent to the home office by Mr. Kendall, Oct. 22, '79.

Yours truly,

(Signed) E. A. WARFIELD, *Fin'l Ag't.*

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 71, F. V. C.

(Copy.)

Loan 682.

JUNE 30TH, 1880.

* * * Testimoney of Dr. Boone in regard to the misdescription in trust deed, showing what property was intended to have been described, has been taken by the master in chancery, and his report has been made up.

Report finds that the description was incorrect by clerical
475 mistake, and also finds what the correct description is.

On the strength of which report we shall get a decree reforming the description in the trust deed so that there can be no question hereafter as to its correctness.

Respectfully submitted.

(Signed) ROBT B. KENDALL, *Att'y.*

EXHIBIT 72, F. V. C.

CHICAGO, ILL., *July 10th*, 1880.

Union Mut. Life Ins. Co., Boston:

I beg to enclose herewith 2 certificates and 1 receipt on the Diversy farm, being a portion of security to former loan No. 682, Kirchoff. Said certfs. and receipt were sent to me on April 17th, last, in a favor from vice-pres't.

I find upon examination that they do not cover the property released to Diversy.

Yours truly,

(Signed) ROB'T B. KENDALL.

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

476 John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 73, F. V. C.

CHICAGO, ILL., *July* 12, 1880.

Union Mut. Life Ins. Co., Boston:

President's favor of the 9th relative to Kirchoff matter, No. 682, is at hand. I have instructed Mr. Kendall to proceed in this case and get Mr. Kirchoff out.

As soon as he does so I will rent the premises to somebody who will pay more promptly.

Yours truly,

(Signed) E. A. WARFIELD, *Fin'l Ag't.*
W.

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

477 John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 74, F. V. C.

CHICAGO, ILL., *July* 24, 1880.

Union Mut. Life Ins. Co., Boston:

Referring to president's favor of 9th ult. concerning taxes, have to report that the taxes on

* * * * * * *

No. 682, Kirchoff. It has been a little difficult for me to get the description of the land near Wilmette in such shape that I could pay the taxes. According to our records somebody has paid the taxes on all this property except 15 acres. We are having the matter looked up, and will report to you again concerning —. A portion of the taxes were paid by the receiver. * * *

Yours truly,

(Signed) E. A. WARFIELD, *Fin'l Ag't.*
W.

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

478 John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 75, F. V. C.

CHICAGO, ILL., *Aug. 5th*, 1880.

Union Mut. Life Ins. Co., Boston:

The following list of special assessments can be paid without any additional costs any time during the next 60 days, if found to be advisable to pay them on investigation. * * * No. 682, Kirchoff, $108, for curbing, grading, & paving Fulton street.

* * * * * * *

Yours truly,
(Signed) E. A. WARFIELD, *Fin'l Ag't.*
W.

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney. 479

EXHIBIT 76, F. V. C.

CHICAGO, ILL., *August 5th*, 1880.

Union Mut. Life Ins. Co., Boston:

The following is a list of unpaid taxes on the company's property in this county, so far as I am able to learn:

* * * * * * *

682, Kirchoff. Taxes appear to be all paid except on 15 acres of the Diversy farm and property. Some one has paid taxes on this farm by mistake.

The taxes on lot 26 of bl'k 28, in Rose's subd'n, W. ½ sec. 5, 39, 14, have been paid by Gage for some years. I think Mr. Hamilton understands that the Co. has no title to this lot. It is my impression that the title is good in the Co., subject to Gage's tax deed, but I may be in error.

* * * * * * *

In all the above cases there are reasons for not paying these taxes which have already been submitted to the company.

Yours respectfully,
(Signed) E. A. WARFIELD, *Fin'l Ag't.*
W.

480 (Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

EXHIBIT 77, F. V. C.

(Copy.)

Union Mutual Life Insurance Company, [No. 133 La Salle street. *]

[E. A. Warfield,*] financial agent; R. B. Kendall, attorney.

CHICAGO, ILL., *Sept. 24th*, 1880.

Union Mut. Life Ins. Co., Boston:

I*n* am in receipt of pres't's favor of 15th inst. with c'k, $621.81, to the order of Johnson. Collect*or* and enclosed herewith tax receipt in duplicate on properties # 1113, # 480, # 715, # 1170, # 902, # 1332, # 682, # 1565, and # 2267—amounting to $613.87, which,
with $9.94, returned to me by collector for spec. ass't annulled
481 on # 601 property and which appears in my daily statement,
makes $621.81, the amount of Co.'s check. In case of # 2092 the proper amount was paid and receipt in duplicate sent with my last week's report. I gave the notice in # 1164, Woodman case, to Mr. Morey, who said he would get the purchaser to pay it, if possible.

Yours truly,

(Signed) J. H. GALLERY.

EXHIBIT 78, F. V. C.

Union Mutual Life Insurance Company, [No. 133 La Salle street.*]

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; [E. A. Warfield, financial agent;*] R. B. Kendall, att'y.

71 WASHINGTON STREET, CHICAGO, ILL., *Oct.* 22, 1880.

Union Mutual Life Insurance Company, Boston:

In reply to letter of the 19th relative to tax title of Gage on lot 26, O. J. Rose's sub'n (loan 682, Kirchoff), and to copy of Warfield's letter of Aug. 5, '80, sent me a short time ago.

Upon receipt of your former letter enclosing copy of Warfield I
requested Mr. Hamilton to open negotiations with Gage rela-
482 tive to settlement of his claims, all such negotiations having
been made through him heretofore. I suppose he could manage Gage better than I could, and, besides, he had an understanding with Gage at the time the Co. had a general settlement

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[* Words enclosed in brackets erased in copy.]

with him that he had included all claims on land the Co. were interested in & it was unfair in Gage to keep this back—so Hamilton says. Hamilton has not yet reported progress; will enquire of him.

Very truly,
(Signed) ROBT B. KENDALL.

EXHIBIT 79, F. V. C.

Real-estate office of Henry C. Morey, 79 Dearborn street.

CHICAGO, *Oct.* 26, 1880.

Union Mutual Life Ins. Co.:

I had an offer this morning of $5,000 cash for No. 155 Fulton St., part of the Kirchoff loan. This property, I believe, was valued at $5,000, but I have been asking $6,000 for it in the hope of getting near that am't. I find, however, that the building is in such bad repair that most parties do not attach much value to it, & the ground without the building is worth about $125 *pre* foot, or $3,750. So that I am now of the opinion that we shall not be able to get much, if any, over $5,000 for it.

483 Since making the offer this morning the party who wished to keep a lodging-house in it, if he buys, has been over & inspected it more thoroughly & wants to wait a day or two before renewing his offer. I write to see if in case I cannot do better if I shall take $5,000 for it. I understand from Mr. Kendall that the title can be made to this property all right.

* * * * * * *

Yours resp'y,
(Signed) H. C. MOREY.

EXHIBIT 80, F. V. C.

Union Mutual Life Insurance Company, 71 Washington [No. 133 La Salle street.*]

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield [financial agent;*], R. B. Kendall, attorney.

485 EXHIBIT 80 CONTINUED.

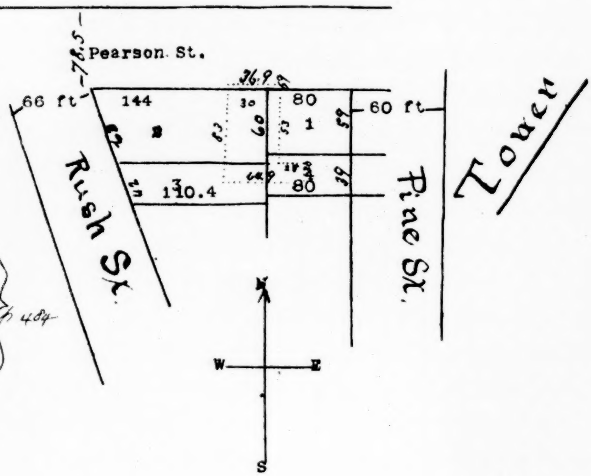
71 WASHINGTON ST., CHICAGO, ILL., *Oct. 27th*, 1880.

Union Mutual Life Insurance Company, Boston, Mass.:

On the 23d Sept. last I was informed by Mr. Kirchoff that a special agent of the U. S. Treasury had been to see him with reference to a claim of the United States upon a part of lots 2 & 4, bl'k 21, C. T. sub'n of S. fractional of sec. 3, 39, 14, being the Pine St.

[* Words enclosed in brackets erased in copy.]

$682 Kirchoff.



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block & the lot on the corner of Rush & Pearson Sts., resulting from a seizure of the distillery formerly occupying the ground.

It appears that Kirchoff was, some time prior to the great fire, carrying on the business of a distiller upon the premises, and that a seizure was made by the collector of internal revenue for some violation of the revenue laws, and that after the usual legal proceedings in court the property was sold and bid in by the Government for $2,500. This M'ch 31, '71.

The fire destroyed all the records of the county, as you know, and this sale seems never to have been noted by the abstract-makers. In fact the deed to the U. S. was never recorded. Hence there is nothing to put any one on enquiry in regard to the matter, and if it was a transaction between individuals the adverse title
486 could not be maintained, but with the Government it is different.

The statutes of limitations do not bar the United States from setting up any claim, as I understand the law. This matter has slumbered all these years without anything having been done since the sale in M'ch, 1871.

I had an interview with the agent of the Treas'y Dep't when he was here and got from him the facts before stated. He wants an offer for the Gov't title.

Since then I have had a letter from him from Washington, to which I have replied, saying I have not yet got a proposition from the Co., but would try an advisement very soon what you would do about it, and ask him that matters remain *in statu quo* for awhile.

The property has been sold (23d inst.) by the master in ch'y and bid in by the Co. I enclose rough sketch showing location of the Gov't claim, by which you will see that the land claimed by the Gov't takes part of lots 1, 2, 3, & 4.

(Here follows diagram marked p. 484.)

The owner of lot 1 is very anxious to buy from the Co. the W. 30 ft. of lot 2, and says he will give $100 a foot for lot 4.

The Treasury agent told me he had not mentioned the matter to any of the occupants of the land except Kirchoff, as he considered him principally interested.

I bid in lot 2 for $9,000 and lot 4 for $8,000, so that a pur-
487 chaser would not be afraid of redemption.

This is an additional complication of the Kirchoff case, but may not be very serious. I was given to understand by the Treas'y ag't that the Gov't did not expect a large bid, but was disposed to take anything reasonable.

The Gov't would, however, have to sell at auction and will advertise if a reasonable bid is filed in advance.

Probably there would be no competition.

If I have not made this matter clear it is because of the difficulty of explaining by letter, not because the letter is too short.

Yours truly,
(Signed) ROB'T B. KENDALL.
31—418

EXHIBIT 81, F. V. C.

71 WASHINGTON, CHICAGO, ILL., *Oct.* 30, 1880.

Union Mutual Life Insurance Company, Boston:

I gave a draft to Henry W. Bishop, master in chancery, yesterday for the sum of nine hundred and seven $\frac{77}{100}$ dollars for costs, commissions, &c., in case *vs.* Kirchoff.

Will forward certificates of sale with statement on Monday next.

488 The bids amounted to $92,000, and I settled with the master's commission on basis of $50,000, 1½ %, $750.

Yours truly,

(Signed) ROBT B. KENDALL.

(Letter-head of original.)

Union Mutual Life Insurance Company, 71 Washington [No. 133 La Salle*] street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; [E. A. Warfield, financial agent; *] R. B. Kendall, attorney.

EXHIBIT 82, F. V. C.

71 WASHINGTON, CHICAGO, ILL., *Nov.* 2*d*, 1880.

Union Mutual Life Insurance Company, Boston:

I submit the following statement of the Kirchoff case in matter of the sale under decree of foreclosure:

Decree entered Aug. 30, '80, for	$91,358 16
Int. on am't in decree to day of sale	761 31
Taxed costs	119 27
Master's commissions (1½ % on $50,000)	750 00
489 Master's certificates of sale (15)	7 50
" p'd recording duplicate certif's	10 50
" " advertising sale	15 50
" report of sale	5 00
Total	$93,027 24
Am't bid at sale	92,000 00
Deficiency	$1,027 24

Herewith find certificates of sale as follows:

1.	Lot one (1),	bl'k 4,	Knokke & Gardner's sub.	$1,500 00
2.	" two (2),	" 4,	" " "	1,500 00
3.	" three (3),	" 4,	" " "	1,500 00
4.	" ten (10),	" 4,	" " "	2,500 00
5.	" eleven (11),	" 4,	" " "	2,500 00
6.	" twelve (12),	" 4,	" " "	2,500 00

[* Words enclosed in brackets erased in copy.]

7.	Lot ten (10), 64, original town of Chicago	8,000 00
8.	" twenty-six (26), O. J. Rose's sub'n, &c.	1,000 00
9.	" three (3), in N. E. cor. bl'k 53, Kinzie's add'n.	3,000 00
10.	" two (2), bl'k 21, C. T. sub'n S. frac. 3, 39, 14..	9,000 00
11.	" four (4), bl'k 21, " " " " " " ..	8,000 00
12.	E. $3\frac{1}{10}$ acres of bl'k 3, in Lill & heirs of Diversy's div'n of S. W. $\frac{1}{2}$ N. W. $\frac{1}{4}$ sec. 29, 40, 14	9,000 00
13.	Block twelve (12), in last above division.........	15,000 00
14.	N. 15 acres of N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ sec. 28, 42, 13, except R. R.	4,500 00
15.	E. $\frac{1}{2}$ N. E. $\frac{1}{4}$ sec. 28, 42, 13, except railroad	22,500 00
		$92,000 00

490 The holders of these certificates will be entitled to deeds on 21st January, 1882.

It seemed to be best to bid in these *prices* of property for about enough to satisfy the decree and costs, partly because a deficiency decree would be worthless, and it was also understood between the parties to the suit, Kirchoff & wife & Mrs. Diversy, that in consideration of their quitclaim deeds no deficiency decree should be taken, and partly because it might enable the company to sell the property before the master's deed will be issued in January, 1882, holding as you now do the deed of Kirchoff & wife and certificates of sale for, probably in most case-, much more than the market value of the property, so that a purchaser, being the assignee of the certificate for a sum much less than its face, would have no fear of its redemption by any creditor.

It seems now that the property might be all put into the market.

This policy in regard to the bids has, of course, added a few hundred dollars to the expense of foreclosure, perhaps $200, but on such a large amount of property that will not weigh against the advantage to be derived from holding it at high figures.

The master agreed to base his commission on $50,000 and allow me to bid as high as desired.

491 The claim presented about a year ago growing out of the old suit of Johnson *vs.* Diversy, about which some correspond*a*nce has been had between the Co. and myself, has recently revived enough to again threaten proceedings to subject his land to it- payment in part, and we may have to defend against it yet, although I had concluded tne claimant had abandoned any hope of mulc*h*ing the company.

They have engaged fresh legal talent & have interviewed your humble servant two or three times and have requested a decision as to what we will do. We have taken time to consider. They seem to wait very patiently.

We keep them waiting—pleasantly.

Your counsel flatters himself that he is good at that—his "stronghold," as it were—and he has no doubt you will che*re*full- accord him much credit in that line.

Hoping for your approval of the course persued, and hoping Garfield will be elected today, I remain,

Truly yours,

(Signed) ROBT B. KENDALL.

(Letter-head of original.)

492 Union Mutual Life Insurance Company, 71 Washington [No. 133 La Salle*] street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; [E. A. Warfield, financial agent;*] R. B. Kendall, attorney.

EXHIBIT 83, F. V. C.

(Copy of telegram.)

CHICAGO, *Nov.* 8, 1880.

Union Mutual Life Ins. Co., Boston:

* * * * * * *

Think can make Kirchoff, Fulton St., move than five soon.

(Signed) H. H. MOREY.

EXHIBIT 84, F. V. C.

Real-estate office of Henry C. Morey, 79 Dearborn street.

CHICAGO, *Nov.* 8, 1880.

Union Mutual Life Ins. Co.:

* * * * * * *

There is considerable enquiry for manufacturing property & I will make price of Kirchoff, 155 Fulton St., at $6,000, & I think I may be able to get at least $5,500 and perhaps $6,000 for it.

Y'rs resp'y,

(Signed) H. C. MOREY.

493 EXHIBIT 85, F. V. C.

CHICAGO, ILL., *Nov.* 10, 1880.

Union Mutual Life Insurance Co.:

In reply to favor of 2nd relative to the Kirchoff case and the claim of the United States, saying that you cannot find that, I state for what am't claim can be settled, &c. I have to say that the Treasury ag't whom I saw did not name any sum, but intimated that a bid for something less than the am't the Gov't bid the property in for, viz., 2,500, would be acceptable.

From recent conversation with the ass't U. S. dist. att'y here, to whom the sp'l ag't referred me, I learn that the ag't had the sum of $2,000 in his mind.

[* Words enclosed in brackets erased in copy.]

I think there are circumstances connected with the case that may influence more favorabl*y* terms.

The difficulty is the only records of the Gov't claim are in Washington, and consequently I cannot thoroughly investigate without going there.

Yours truly,
(Signed) ROB'T B. KENDALL.

(Letter-head of original.)

Union Mutual Life Insurance Company, 71 Washington [No. 133 La Salle*] street.

494 John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; [E. A. Warfield, financial agent;*] R. B. Kendall, attorney.

EXHIBIT 86, F. V. C.

Real-estate office of Henry C. Morey, 79 Dearborn street.

CHICAGO, *Nov.* 10, 1880.

Union Mutual Life Ins. Co.:

I enclose a list of the company's property with valuations according to my record.

* * * * * * *

Had an offer of $5,000 for 155 Fulton St. today, Kirchoff. The inside of the building is in a deplorable condition—back walls cracked—and the proposed purchaser estimated he would have to spend $1,500 to put it in good shape.

Y'rs resp'y,
(Signed) H. C. MOREY.

EXHIBIT 87, F. V. C.

CHICAGO, ILL., *Nov.* 13*th*, 1880.

Union Mut. Life Ins. Co., Boston:

495 As *pre* request in yours of the 11th inst., please find enclosed a receipted bill for costs, commission, etc., in case *vs.* Kirchoff, amounting to $907.77, for which sum I drew on you the 29th ult. (or ab't then).

Yours truly,
(Signed) ROB'T B. KENDALL.

[* Words enclosed in brackets erased in copy.]

(Letter-head of original.)

Union Mutual Life Insurance Company, No. [133 La Salle*] 71 Washington street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; [E. A. Warfield, financial agent;*] R. B. Kendall, attorney.

EXHIBIT 88, F. V. C.

Real-estate office of Henry C. Morey, 79 Dearborn street.

CHICAGO, *Dec.* 1, 1880.

Union Mutual Life Ins. Co.:

I am offered $5,500 for 155 Fulton St., Kirchoff loan, payable as follows: $500 cash, 500 6 mos., 4,500 12 mos., int. 6% per annum, & taxes 1880. 496

This is $500 better than I had been expecting lately to get offered, as the inside of the building has been torn*ed* out and damaged. The party who wished to buy intends to spend several hundred dollars in repairs at once. Chalwin & Frazer, the machinists, who own east of this property, offered me $4,500 for it, but would not go higher; another party, $5,000 and no taxes of 1880; so that, if these terms suit, I think it is a good sale. Purchaser of 1911 Wabash is a lone laundry woman and I am afraid is not going to stick to her offer.

Yours resp'y,
(Signed) H. C. MOREY.

EXHIBIT 89, F. V. C.

CHICAGO, ILL., *Dec.* 7, 1880.

Union Mutual Life Insurance Company, Boston, Mass.

Your letter of the 3d, with three quitclaim dee*c*s, viz., 643, No. 682, No. 68*2*, is at hand.

We have prepa*i*red three quitclaim deeds from Warfield and wife to the company and requested him to execute the same.

As soon as he has done so they will be recorded and forwarded to the company.

Very respectfully,
497 (Signed) KENDALL & BLISS.

[* Words enclosed in brackets erased in copy.]

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; [E. A. Warfield,*] financial agent; R. B. Kendall, attorney.

EXHIBIT 90, F. V. C.

CHICAGO, *Dec.* 7, 1880.

Union Mutual Life Insurance Company, Boston, Mass.:

Your letter of Dec. 3d, saying that sale of Kirchoff property on Fulton St. is approved, was duly rec'd.

The abstract is now being continued, and as to the matter of assigning the certificate Mr. Morey has been already advised.

Very respectfully,

(Signed) KENDALL & BLISS.

(Letter-head of original.)

Union Mutual Life Insurance Company, [No. 133 La Salle street.*]

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; [E. A. Warfield,*] financial agent; R. B. Kendall, attorney.

498 EXHIBIT 91, F. V. C.

Real-estate office of Henry C. Morey, 79 Dearborn street.

CHICAGO, *Dec.* 9, 1880.

Union Mutual Life Ins. Co.:

Referring to my last letter, in regard to sale of 155 Fulton St., I have to refer to that C. L. Jenks, the father of the party who made the offer of $5,500 and who "sat down" on his son's proposed purchase as being one he could not carry out, now comes to the front and makes the following proposition, which he says will be carried out, viz:

He agrees to pay for the property $5,000.

Cash	1,000
3 years int., 7 per cent. per annum, payable s.-annually	4,000
	5,000

and taxes, 1880.

I was in hopes to get you 5,500 for this property, but find it a tough job, and expect the above offer is about as good as we can expect at present.

Y'rs resp'y,

(Signed) H. C. MOREY.

Please telegraph answer.

[* Words enclosed in brackets erased in copy.]

499 EXHIBIT 92, F. V. C.

(Copy of telegram.)

CHICAGO, ILL., *Dec.* 14, 1880.

Union Mutual Life Ins. Co., Boston:

Purchaser offers fifty-five hundred for one fifty-five Fulton; five cash, five six months, forty-five three years, six interest.

(Signed) H. C. MOREY.

EXHIBIT 93, F. V. C.

Real-estate office of Henry C. Morey, 79 Dearborn street.

CHICAGO, *Dec.* 15, 1880.

Union Mutual Life Ins. Co.:

Your telegram of 15th inst. approving sale of 155 Fulton St., 5,500, duly rec'd, and the party takes the property and will be ready to close as soon as abstract is ready and title examined and found right.

* * * * * * *

Yours resp'y,

(Signed) H. C. MOREY.

Mr. Prentice, who owns the brick house adjoining on Pine St., offers $6,000 cash for corner of Rush and Pearson.

500 Thinks, as he has no use of property for a year, that is enough, but I think it will bring more.

EXHIBIT 94, F. V. C.

CHICAGO, ILL., 1, 5, 1881.

Union Mutual Life Ins. Co., Boston:

We enclose copy of your letter to Mr. Morey sent us with your favor of the 15th ult'o relative to sales of Wethnel, Rick, and Kirchoff propert*y*-s.

We find it nearly illegible and therefore don't like to rely upon it for instructions.

The "copy of telegram" mentioned in same favor was not enclosed, as you supposed.

We can, of course, have access to Morey's letter; but if you send us any more copies, please send legible ones.

Yours truly,

(Signed) KENDALL & BLISS.

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

501 EXHIBIT 95, F. V. C.

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

CHICAGO, ILL., 1, 20, 1881.

Union Mutual Life Insurance Company, Boston:

Lot 10, block 64, original town of Chicago, known as the Fulton St. property, Kirchoff loan #682, appears to have been sold for city taxes of 1874 (relevied) to Wm. Mills, Sept. 20, '78, for $79.52.

Mills is one of Hamilton's clerks, and we therefore assume that the certificate of sale is in your possession.

The same lot was also sold for the State, county, and city taxes of 1877 to D. G. Hamilton, Oct. 14, '78, for 122.90, and you probably hold the certificate of sale in this case.

As this lot has been sold, it will be necessary to have the certificate surrendered and cancelled in order to satisfy the purchaser.

Please, therefore, send them to us for that purpose.

Yours truly,

(Signed) KENDALL & BLISS, *Att'ys.*

502 EXHIBIT 96, F. V. C.

Kendall & Bliss, attorneys.

JAN'Y 31, '81.

Union Mutual Life Ins. Co., Boston:

Herewith find my check for the sum of one hundred and fifteen dollars and seventy eight cents ($115.78), being am't collected from Mrs. Diversy for tax claim on the 40 acres released to her from the Kirchoff-Diversy trust deed (No. 682), which claim she agreed to take up before, but was unable to at time the release was given, but which she was obliged. to take up because the Co. held tax certificate, viz.:

Tax-sale certificate	$47 52
Interest on same, 3 years 4 mos., 6 %	9 50
Am't p'd for subsequent tax	51 28
Int. on same, 2 yrs. 3 mos., 6 %	6 91
Costs	57
Total	$115 78

The rate of int. was agreed upon at time the compromise was made.

Not having access to your deposit book, I remit in this manner. Please acknowledge receipt.

The tax-sale certificate was surrendered to Mrs. Diversy, but you have the receipt for the subsequent tax, which will 503 show the items of $51.28 and the 75c. costs, although they are probably "lumped" with other charges on your books.

Hoping this my last collection I shall report for the Co. will be satisfactory,

I am, very resp'y,

(Signed) ROB'T B. KENDALL.

EXHIBIT 97, F. V. C.

D. G. Hamilton & Co., tax-abstract makers & investors in taxes, 126 South Clark street.

CHICAGO, ILL., *Feb'y* 2, 1881.

Daniel Sharp, Esq., vice-pres., Boston, Mass.

DEAR SIR: In reply to yours of 26th January and enclosed copy of report of your att'y relative to No. 682, Kirchoff, I would say that after receipt of the letter of Oct. 22nd I saw and talked with the attorney relative to that matter.

I also knew that this lot was claimed to be in the Kirchoff trust deed, but somehow I have always understood that that Kirchoff did not own that lot, as well as some lots in Knokke & Gardner's subdivision. Upon what I based this understanding I do not now recall.

504 I do not know how this was not settled for with Gage three years ago. I gave him my list, and he prepaired his list of claims from it. I also checked off his books with him from my list; but, however the case may be, he has not brought the property at tax sale since I have had the company's list, Gage having regularly paid all taxes as they accrued since 1875. He purchased at tax sale- of 1872, 1873, and 1875, and has paid all the taxes since, including taxes of 1880.

I enclose his two letters relating to the lot received yesterday, wherein he sets his price at $290. I cannot at this moment pass upon the price, nor do I know that you want me to. I will, however, look into it and be ready to report after I hear from you.

The remainder of the report I know nothing about, having never heard of it before, and assume that it was sent to me by mistake.

Yours truly,

(Signed) D. G. HAMILTON.

EXHIBIT 98, F. V. C.

CHICAGO, ILL., *February* 5, 1881.

Union Mut. Life Ins. Co., Boston:

Enclosed find for execution deed from Co. to Peter Rhode for lot 10, bl'k 64, formerly loan # 682, Kirchoff.

505 As the Co. have not a deed to this property, it will be necessary to send the certificate here for assignment.

Under date of Dec. 3d the president writes that the sale of this property is approved—$500 cash; $500, 6 mos.; $4,500, 12 mos., int. 6%, and tax of 1880.

In a letter dated Dec. 15, to H. C. Morey, the terms are stated as above, except as to the last payment, which is $4,500; 3 years.

Please inform me which way to make the papers.

Very respectfully,

(Signed) E. R. BLISS.

(Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; [E. A. Warfield,*] financial agent; [R. B. Kendall,*] attorney.

EXHIBIT 99, F. V. C.

D. G. Hamilton & Co., tax-abstract makers, &c., 126 South Clark street.

CHICAGO, ILL., *Feb.* 11, 1881.

506 Daniel Sharp, Esq., vice-pres't U. M. L. Ins. Co., Boston.

DEAR SIR: No. 682, in accordance with your instructions of Feb. 5, '81, I negotiated with Mr. Gage for lot 26, in E. ½ block 28, section 5, 39, 14, and paid him today $250; therefore I enclose his receipt therefor and all the tax vouchers. As I did not know to whom to take the deed, I took it to myself till I received instructions form the home office.

The deed from As-hel Gage I did not receive, but will by Wednesday next.

* * * * * * *

Recapitulation.

* * * * * * *

No. 682, tax claim from Gage, $250.00.

[Total paid out by me without commissions, $540.01. C. L. D.*]

I send herewith the vouchers I have *receipt* from Gage, including tax receipts, but retain the deed till I get the other from Asahel

---

[* Words enclosed in brackets erased in copy.]

Gage and receive instructions to whom to make my quitclaim, if it is desired.

* * * * * * *

Yours truly,
(Signed) D. G. HAMILTON.

507 **Exhibit 100, F. V. C.**

(Copy of telegram.)

Chicago, *Feb.* 12, 1881.

Jno. E. De Witt, 153 Tremont, Boston:

Kirchoff case, Morey's agreement, accepted by company, says: Cash, five hundred; six months, five hundred. This brings six-months' note due June fifteenth. Shall we make same to close to-day?

(Signed) JOHN O. WINSHIP.

Exhibit 101, F. V. C.

John O. Winship, [Kendall & Bliss*] attorney, 71 Washington street, Chicago.

Feb'y 14, 1881.

Union Mutual Life Ins. Co.

Gentlemen: I telegraphed you on Saturday in relation to the Kirchoff case. This seems to be the situation: Morey says he forwarded to you a proposition for sale of this property at a certain price, with cash, $500, and five hundred dollars in six months. This was Dec. last, and would bring the note due next June. Now,
Morey says you accepted this offer, and the party is ready to
508 close the matter and was on Saturday last on these terms,
but Bliss says your instructions are positive to have all notes
due and payable May 1st, &c. I telegraphed you in order to settle this, and if you have such a rule would it not be best to so notify Morey in regard to receiving propositions for sale? And, again, would it not be well to have Morey make his proposition of sale to you through this office, that, in the first place, we might know just what the offer is and our records show the whole transaction, and, secondly, that we might be in possession of useful information, which we could communicate to you, which would aid you in determining the acceptance or rejection of the offer.

I submit this suggestion.

Very truly,
(Signed) JOHN O. WINSHIP.

EXHIBIT 102, F. V. C.

CHICAGO, ILL., *Feb'y* 21, 1881.

Union Mutual Life Ins. Co., Boston:

Sale of Kirchoff, No. 682 (lot 10, B. 64, O. T.), closed; have deposited $500, and herewith enclose note.

The mortgage is at the recorder's office.

Respectfully,

(Signed) E. R. BLISS.

509 (Letter-head of original.)

Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; [E. A. Warfield,*] financial agent; [R. E. Kendall,*] attorney.

EXHIBIT 103, F. V. C.

Real-estate office of Henry C. Morey, 79 Dearborn street.

CHICAGO, *Feb'y* 24, 1881.

Union Mutual Life Ins. Co.:

I have this day rec'd per d'ft from J. E. De Witt, pres., on your payment for the following bills, coms. on sale:

* * * * * * *

Kirchoff, 155 Fulton	137 50
	[$225 00*]

Yours resp'y,

(Signed) H. C. MOREY.

510 EXHIBIT 104, F. V. C.

CHICAGO, ILL., 2, 22, '81 (called).

Union Mut. Life Ins. Co., Boston:

In reply to your letter to Mr. J. O. Winship of the 16th inst., handed by him to me, I would say that the following papers have been sent by express:

* * * * * * *

In the following the papers asked for have become a part of the files in the U. S. court and cannot be withdrawn unless for a special purpose:

682, Kirchoff, 2 T. D.'s.

* * * * * * *

[* Words and figures enclosed in brackets erased in copy.]

The following deeds have been delivered and sales closed:

* * * * * * *

682, Kirchoff note sent H. O. mtg. at recorder's.

* * * * * * *

This, I believe, fully covers all matters alluded to in your letter to J. O. W., 16th inst.

Respectfully,
(Signed) E. R. BLISS.

(Letter-head of original.)

511 Union Mutual Life Insurance Company, No. 133 La Salle street.

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; [E. A. Warfield,*] financial agent; [R. B. Kendall,*] attorney.

EXHIBIT 105, F. V. C.

Kendall† & Bliss, attorneys, 71 Washington street.

CHICAGO, *March 9th*, 1881.

Union Mutual Life Insurance Company, Boston, Mass.:

The following papers have been rec'd:

* * * * * * *

#682, 1389, 733, 491, and 1113, abst. of Kendall's report.
(Letter Feb'y 24, '81.)

In the following fire policies have been delivered to O. W. Barrett:

* * * * * * *

#682, 1 policy (lot 10, B. 64).

* * * * * * *

512 Respectfully,
(Signed) E. R. BLISS.

EXHIBIT 106, F. V. C.

Real-estate office of Henry C. Morey, 79 Dearborn street, room 1.

CHICAGO, *M'ch* 23, 1881.

Union Mutual Life Ins. Co.:

I was offered $2,500 cash today for the 20 ft. on Chicago Av. near Pine St., in Kirchoff loan for the certificate.

I think before the redemption runs out, which is about 10 months, you can get the 3,000 that the certificate calls for if you desire to hold it, as property is building up fast in that locality.

Y'*es* resp'y,
(Signed) H. C. MOREY.

[* Words enclosed in brackets erased in copy.]
[† Across the face of this word are written the letters E. R.]

EXHIBIT 107, F. V. C.

Real-estate office of Henry C. Morey, 79 Dearborn street, room 1.

CHICAGO, *M'ch* 31, 1881.

513 Union Mutual Life Ins. Co.:

* * * * * * *

Was offer No. 635, Sawyer made M'ch 22nd, and Kirchoff, Chicago, on Sat., M'ch 23d, accepted?

Hope to hear from you soon about all these and others.

Y'rs resp'y,

(Signed) H. C. MOREY.

EXHIBIT 108, F. V. C.

Union Mutual Life Ins. Co., western department, 133 La Salle street.

John E. De Witt, pres't; Daniel Sharp, vice-pres't; Jas. P. Carpenter, sec'y; Allen G. Fowler, superintendent.

CHICAGO, *May 2d*, 1881.

Union Mutual Life Ins. Co.

GENTLEMEN:

* * * * * * *

Constable ——, $6.50 on report of same date should have been paid by receiver, but there was none at that time, so I paid the bill.

The loan is No. 682, Kirchoff.

Yours truly,

(Signed) JAMES R. PAGE.

514 EXHIBIT 109, F. V. C.

Real-estate office of Henry C. Morey, 85 Washington St., [79 Dearborn street,*] room 1.

CHICAGO, *May* 27, 1881.

Union Mutual Life Ins. Co.:

Mr. De Witt suggested that I write you for list of prices you have the Kirchoff property marked at for sale.

I have the list that they were bid in at the mortgage sale, but not the other list.

Y'rs resp'y,

(Signed) H. C. MOREY.

[* Words enclosed in brackets erased in copy.]

EXHIBIT 110, F. V. C.

(Copy.)

Loan 682.

E. A. Warfield, Esq., Chicago, Ill.

D'R SIR: * * * Mr. Kendall in his letter of 3d inst., in relation to expenses of procuring abstract loan 682, 838, 623, 615, and 384, states that it will cost about $1,700 less 20 % discount.

Please say to him that we see no other way but for the 515 Co. to pay for them.

Yours truly,
(Signed) JOHN E. DE WITT, *President.*
(F. N.)

EXHIBIT 111, F. V. C.

(Copy.)

Loan 682.

BOSTON, *March 16th*, '77.

R. B. Kendall, Esq., Chicago, Ill.

D'R SIR: In your letter of M'ch 3d, '77, you state that you have no abstract for loan No. 682, Kirchoff, for foreclosure in court.

According to our docket, copied from yours, this was foreclosed May 26, '76. If such is the case why try to foreclose a second time?

Yours truly,
(Signed) JOHN E. DE WITT, *President.*
(F. N.)

EXHIBIT 112, F. V. C.

BOSTON, *April 5th*, 1877.

516 E. A. Warfield, Esq., Chicago, Ill.

D'R SIR: Yours of 3d inst. at hand in relation to loan No. 682, Kirchoff & Diversy.

Your action in this matter is approved.

Yours truly,
(Signed) JOHN E. DE WITT, *President.*
(F. N.)

EXHIBIT 113, F. V. C.

(Copy.)

Loan 682.

BOSTON, *May* 11, 1877.

E. A. Warfield, Esq., Chicago, Ill.

D'R SIR: We are in receipt of your four favors of 9th inst. with appraisals of property, loans 155, 833, 1607.

We make the following propositions with the proviso that they are satisfied by the finance committee at their next meeting on 14th inst., which we have no doubt they will approve:

* * * * * * *

No. 682, Kirchoff, we suggest waiting 30 days; then, if agree't is not carried out, bring the matter to our attention.

517 Yours truly,

(Signed) JOHN E. DE WITT, *President.*
(F. N.)

EXHIBIT 114, F. V. C.

(Copy of telegram.)

BOSTON, *July 5*, 1877.

E. A. Warfield, Boone block, 133 La Salle St.:

Can't you arrange the Kirchoff matter before you leave?

(Signed) JOHN E. DE WITT, *Pres't.*

EXHIBIT 115, F. V. C.

BOSTON, 8. 3, 1877.

R. B. Kendall, Esq.

DEAR SIR: At a meeting of the finance committee this morning we considered the matter of the Kirchoff loan and we propose to let him have his own way about it, but get the time reduced to five years if you can.

The reasons moving the finance committee in this matter are simply these: That they deem this the easiest and quickest way to get the title to the property; that if we have to go into court 518 to correct the defect in the title affecting the larger part of the loan, it would injure the credit of the Co. a great deal more than to allow this money to remain at 5% for so long a time, even if they pay the interest. Certainly, if they do not pay the interest, we will have perfected the title in the easiest way possible for us.

Yours truly,

(Signed) JOHN E. DE WITT, *President.*
B.

EXHIBIT 116, F. V. C.

BOSTON, *August 8th*, 1877.

E. A. Warfield, Esq., Chicago.

DEAR SIR: Referring to yours of 23d July in regard to loan 682, Kirchoff, the finance committee at a recent meeting voted to extend the loan ten years at five per cent. interest, Kirchoff to pay 5% of the principal with each semi-annual interest.

Yours truly,

(Signed) DANIEL SHARP, *Vice-Pres't.*

519 EXHIBIT 117, F. V. C.

(Copy of telegram.)

BOSTON, MASS., *Aug.* 16, 1877.

E. A. Warfield, financial ag't, 133 La Salle St.:

Make new loan to Kirchoff five per cent., as agreed in president's letter of third.

(Signed) DANIEL SHARP, *Vice-Pres't.*

EXHIBIT 118, F. V. C.

BOSTON, *Sept.* 11, 1877.

DEAR SIR: Yours of 6th rec'd and, I think, unanswered; if so, say, relative to loan No. 682, Kirchoff, we agree with you, as stated in that letter, "that you had better enter a judgment at once and proceed to sell the property."

The writer expects — tomorrow m'n'g for mts., to be absent about 2 weeks.

Yours truly,

(Signed) E. R. SECCOMB, *Sup't.*

E. A. Warfield, Esq., ag't, Chicago.

520 EXHIBIT 119, F. V. C.

BOSTON, 1877, 9, 22.

Rob't B. Kendall, Esq., 133 La Salle St., Chicago, Ill.

DEAR SIR: Your favor of the 18th inst. in reference to the Kirchoff case has just reached us. We think you did well to get judgment in the matter. Will it be advisable to drive them hard, and will the judgment be good if they go into bankruptcy?

We would like to have you look carefully into the bankrupt law, &c., providing they go into bankruptcy within 6 months and we do not sell the property; whether our claim on mortgage land would hold good, or whether we should be compelled to come in as common creditors.

If you think it necessary, perhaps you had better confer with some other counsel, as the interest at stake is large.

This letter will also apply to the Couch loan.

We would rather these things be nursed until I go out next month, if by so doing no security that we now hold would by the delay be released. If that is the case, protect the interest by action.

Yours truly,

(Signed) JOHN E. DE WITT, *President.*
G. J. C.

521 EXHIBIT 120, F. V. C.

BOSTON, 1878, 1, 30.

Mr. E. A. Warfield, 133 La Salle St., Chicago.

DEAR SIR: You will oblige us with an early reply to the following: Is there not something wrong in the valuation of loan * * * 682 * * *

We have them just as you forwarded them.

* * * * * * *

Yours truly,
(Signed) JOHN E. DE WITT, *Pres't.*
G. J. C.

EXHIBIT 121, F. V. C.

BOSTON, *Feb.* 12, 1878.

E. A. Warfield, Esq., Chicago, Ill.

D'R SIR: We wrote you a day or two since to attach lot 169, Grun's S. B. add'n to Chicago, security to loan No. 359, Kirchoff.

As we find by Mr. Kendall's letter of 17th ult. that the title
522 is in Amanda S. Cook, we are of the opinion that we cannot attach the land for Kirchoff debt, loan 682.

We should like to know how the lot stands—whether taxes are paid, &c.

Yours truly,
(Signed) JOHN E. DE WITT, *President.*
(F. N.)

EXHIBIT 122, F. V. C.

BOSTON, 1878, *Feb.* 13*th.*

E. A. Warfield, Esq., Chicago, Ill.

D'R SIR: Yours of 11th inst. at hand relative to Kirchoff loan in which Co. has no title (No. 682).

As we understand the matter now the Co. has no title to the 12 lots, but they are covered by the judg't which has been entered up on the note. Are we not right? Please call my attention to this matter on my next visit to Chicago.

We do not need certificate of valuation loan No. 1376, Hilliard, now loan 579. Val*m*. should be as you stated, $4,000 & $2,000.

Yours truly,
(Signed) JOHN E. DE WITT, *President.*
F. N.

523 EXHIBIT 123, F. V. C.

(Copy.)

Loan 682.

BOSTON, 1878, 3, 26.

Mr. E. A. Warfield, 133 La Salle St., Chicago.

DEAR SIR: We hand you herewith fire policies expiring as follows:

* * * * * * *

Loan 682, No. 1605—Prescott, $1,500—expires 4, 1, '78.

Yours truly,
(Signed) JOHN E. DE WITT.

EXHIBIT 124, F. V. C.

BOSTON, 4, 25, 1878.

Mr. R. B. Kendall, 133 La Salle St., Chicago.

DEAR SIR: Don't push the foreclosure proceeding in the Kirchoff-Diversy and Crawford cases until the time of their voluntary or involuntary bankruptcy has expired, so far as it refers to our judgment being a prior lien on their unincumbered property.

Yours truly,
(Signed) JOHN E. DE WITT, *Pres't.*
C.

524 EXHIBIT 125, F. V. C.

(Copy.)

BOSTON, *Aug.* 6, 1878.

E. A. Warfield, Esq., Chicago, Ill.

D'R SIR: Loan 682. You charge $2.40 for expenses Mr. Rees' acc't, appraisal Diversy land. Please have the appraisal papers forwarded to this office. * * *

Yours truly,
(Signed) JOHN E. DE WITT.

EXHIBIT 126, F. V. C.

BOSTON, *Aug. 14th*, 1878.

R. B. Kendall, Esq.

DEAR SIR: Yours of 9th at hand. Have the land that you speak of in the Kirchoff-Diversy loan surveyed by a surveyor and get the exact am't covered by our m'tg'e.

Note your comments ab't the new developments in the case—that is, in regard to the $8,000 judgment. Make very thorough, careful, 525 and prudent examination of the statute of it and make up a written report of the situation. Furthermore, do not let us get into the same position in this matter that you let us run into in the case of Neely & Dobbins.

Another point, probably, for you to examine into is how much property besides that covered by one m'tg'e is covered by this judgment, and if the judgment holds good whether it is not advisable for us to buy it and commence to sell other properties first to satisfy it, and in that way protect our interest in this property covered by the m'tg'e.

When Mr. Sharp goes out show him this letter and talk it over with him.

Referring to the Neely & Dobbins matter, it seems to me we ought to get that settled up pretty soon. We do not care to pay 10% for money that is lying in the bank at 2%.

Yours truly,
(Signed) JOHN E. DE WITT, *President.*
B.

Exhibit 127, F. V. C.

Boston, 1878, *October 4th.*

Rob't B. Kendall, Esq., Chicago, Ill.

D'r Sir: Your report on sundry matters, dated Sept. 20, '78, is at hand, and we call your attention to the following cases in addition to those referred to in said report:

* * * * * * *

526 682, Kirchoff, tax deed, $2,200, to come to judg't, looked into and surveyed. * * *

Yours truly,
(Signed) JOHN E. DE WITT, *President.*
F. N.

Exhibit 128, F. V. C.

(Copy.)

Loan 682.

Boston, 1878, *October 4th.*

E. A. Warfield, Esq., Chicago, Ill.

D'r Sir: Please furnish information relating to the following cases, viz: * * *

No. 682, Kirchoff. Aug't 6 wrote you for valuation papers Diversy land.

Yours truly,
(Signed) JOHN E. DE WITT, *President.*

527

Exhibit 129, F. V. C.

(Copy.)

Loan 682.

Boston, *Oct.* 11, '78.

E. A. Warfield, Esq., Chicago, Ill.

D'r Sir: We forward you by express today the following valuations, as requested in president's telegram of 16th inst.: * * * No. 682; Morey, 1; Rees, 1.

Yours truly,
(Signed) J. P. CARPENTER, *Sec'y.*
F. N.

Exhibit 130, F. V. C.

(Copy.)

Loan 682.

Boston, *Nov.* 4, '78.

E. A. Warfield, Esq.

Dear Sir: * * * In addition to the properties you have mentioned, I would also suggest the appraisement of the Burroughs and Kirchoff loans.

528 In the first can draw the particular attention of the appraisers to the prorating of the m'tg'e on different lots, and, if they did not before have them, this time appraise the same according to lots.

We have Mr. Rees' individual appraisement, but we prefer, of course, to have the joint opinion of all three, as in all other cases.

Yours truly,
(Signed) JOHN E. DE WITT, *Pres.*
(B.)

Exhibit 131, F. V. C.

(Copy.)

Loan 682.

Boston, *Nov. 5th*, 1-78.

Rob't B. Kendall, Esq., Chicago, Ill.

Dear Sir: We call your attention to the following cases: No. 682, Kirchoff. We do not find that you have attended to having the land surveyed and looked into the matter of $8,000 judgment, as requested in our letter of Aug. 4, '78. Please make report. * * *

Yours truly,
(Signed) JOHN DE WITT, *President.*
(F. N.)

529 Exhibit 132, F. V. C.

(Copy.)

Loan 682.

Boston, *Nov.* 1, '78.

R. B. Kendall, Esq., Chicago, Ill.

D'r Sir: Kirchoff—all we want in this case is to know where we are.

Yours truly,
(Signed) JOHN DE WITT.
F. N.

Exhibit 133, F. V. C.

Boston, *Nov.* 14, 1878.

E. A. Warfield, Esq., Chicago, Ill.

D'r Sir: We received recently from you all of the valuations (or appraisal papers) which were sent to you on the 11th of Oct. except those relating to loans No. 150, No. 682, and No. 730.

Please return those also.

Yours truly,
(Signed) JOHN E. DE WITT, *Pres.*
(F. N.)

530 Exhibit 134, F. V. C.

Boston, *Dec.* 3, 1878.

E. A. Warfield, Esq., 133 La Salle St., Chicago.

Dear Sir: Valuation papers on loans 150, 682, & 730, enclosed in your favor of 30th ult., came duly to hand today.

Yours truly,
(Signed) JOHN E. DE WITT, *Pres.*
C.

Exhibit 135, F. V. C.

153 Tremont Street, Boston, *Jan'y 9th*, 1879.

R. B. Kendall, Esq., Chicago.

Dear Sir: Your favor of 1st inst., responding to ours of 20th Dec'r, duly received. It is quite evident to us that the Hon. Wm. J. Campbell, to whom you refer, will be unable to render the required service in the several cases in which we directed you to associate Mr. Sleeper with yourself, as we presume he will be required to pass the winter at Springfield. If any of the cases to which we
referred in our said letter are near a final settlement, that is
531 all we want, but if they are in the same condition as when
we wrote we confirm our instructions as given to you on the
20th December.

In the matter of the Kirchoff case, if a settlement can be made which shall include Mrs. Diversy's suit and complications of every name and nature and attending costs by Mrs. Diversy retaining the 40 acres the other side of the railroad track, as shown — you to the writer, with all needful quitclaim deeds from parties in interest, so that our title will be unquestioned to the whole property which we then hold, we will consent to let her keep the 40 acres rather than prolong the case in court. If, however, she declines, we wish you to push the matter as before advised.

Yours truly,
(Signed) DANIEL SHARP, *V. Pres.*

EXHIBIT 136, F. V. C.

BOSTON, 18*th Jan'y*, 1879.

R. B. Kendall, Esq.

DEAR SIR: Your favor of 14th duly received. We notice what you say relative to the Kirchoff cases and the suit now pending in the supreme court of your State, Johnson *vs.* Diversy. If a settlement can be made, we wish it to include everything except this
532 suit. It — to us that even a better settlement than you have suggested could be made. Will you please talk the matter over with Mr. Warfield and see if you can agree with him on a plan of settlement? We should also like you to confer with him on a compromise settlement of the $1,500 note, to which you refer. We shall undoubtedly be satisfied with a plan which will have your remit-ed endorsement.

Yours truly,
(Signed) DANIEL SHARP, *V. P.*

EXHIBIT 137, F. V. C.

BOSTON, *M'ch* 14, 1879.

R. B. Kendall, Esq., 133 La Salle St., Chicago.

DEAR SIR: We desire to call your particular attention to the following loans, the overdue interest on which is now very large and daily increasing. * * *

* * * 682, Kirchoff. * * *

We wish vigorous measures to be taken in all the above cases that will permit of it and wish matters pushed to a speedy settlement.

We have no desire to make such an exhibit of overdue interest on a few loans at the end of the present year, as we are compelled to at the beginning.

533 Yours truly,
(Signed) JOHN E. DE WITT, *Pres't.*
C.

EXHIBIT 138, F. V. C.

BOSTON, *May 1st*, 1879.

E. A. Warfield, Esq.

DEAR SIR: Referring to the loan to the South Park commission, 682* did you think to write them that letter that I suggested you write them, saying we would be willing to accept the money, if they were ready to pay it, with int. up to date of payment?

Yours truly,
(Signed) JNO. E. DE WITT, *Pres.*
B.

EXHIBIT 139, F. V. C.

BOSTON, *May* 27, 1879.

Rob't B. Kendall, Esq., Chicago, Ill.

D'R SIR: We call your attention to the following matters with the hope of finding in your next monthly report a goodly number straightened out in a satisfactory manner: 534

* * * * * * *

682. Kirchoff, tax deed, $2,200 to come.

* * * * * * *

We are not quite out of material, and if what we call for is disposed of before June 1st we shall be most happy to contribute again upon application.

Yours truly,
(Signed) JOHN E. DE WITT, *President.*
F. N.

EXHIBIT 140, F. V. C.

153 TREMONT STREET, BOSTON, *Oct.* 16, 1879.

E. A. Warfield, Esq., 133 La Salle St., Chicago.

DEAR SIR: Will you kindly inform us when we may expect to get the Kirchoff loan, No. 682, in shape for closing it up? We would like this matter wound up at as early a date as possible.

Yours truly,
(Signed) JOHN E. DE WITT, *Pres.*
C.

[* In pencil in copy.]

535 EXHIBIT 141, F. V. C.

(Copy.)

BOSTON, *Nov. 1st*, 1879.

E. A. Warfield, Esq., Chicago, Ill.

D'R SIR: In the Kirchoff matter we would request that a settlement be effected as soon as possible. Dr. Boone, we suppose, is at home now and will give his attention to the part required of him.

Have you possession of the house?

* * * * * * *

We do not wish the above matters to lay over Jan'y 1st next, and for that reason urge your attention to the same.

* * * * * * *

Yours truly,
(Signed) JOHN E. DE WITT, *President.*
F. N.

536 EXHIBIT 142, F. V. C.

153 TREMONT STREET, BOSTON, *Nov.* 3, 1879.

Rob't B. Kendall, Esq., Chicago, Ill.

D'R SIR: We are in receipt of your favor of 1st inst., with number of deeds for execution, among which we find one covering lot 2, bl'k 21, canal trustees' subd. of sec. 3, T. 39, being a part of security to No. 682, Kirchoff. We notice that in this case you make mention of a special letter, which letter we do not find, and would ask by what authority this lot is sold for $7,000, and why the proposition comes through you (as we infer it does) by a special letter, instead of Mr. Warfield.

If the communication you refer to had come to hand with the deed, we might have presented it to our financial committee tomorrow; but as it is we do not understand the matter.

Yours truly,
(Signed) JOHN E. DE WITT, *President.*
F. N.

EXHIBIT 143, F. V. C.

153 TREMONT STREET, BOSTON, *Nov.* 5, 1879.

E. A. Warfield, Esq., 133 La Salle St., Chicago.

537 DEAR SIR: We have today written Mr. Kendall that the Kirchoff offer was declined and we will not sell for less than eighty-four hundred dollars.

We want you to take possession of the house, and as soon as the matter is closed up please advise us.

Yours truly,
(Signed) JOHN E. DE WITT, *Pres't.*
C.

EXHIBIT 144, F. V. C.

(Copy.)

BOSTON, *Nov.* 5, 1879.

Rob't B. Kendall, Esq., Chicago, Ill.

DEAR SIR: Your favor of 1st is at hand and submitted to our financial committee yesterday at their regular meeting.

They declined to sell the property mentioned to Mr. Kirchoff or anybody else for $7,000. They will at any time within the next 30 days sell it to Mrs. Kirchoff on the following terms and conditions: For $8,400, one-quarter cash, balance to be paid in 20 semi-annual payments, interest at 6 % per annum.

538 The committee feel in dealing with a man who has so little regard for his promise to pay, together with the fact that there is a 15 mos. equity of redemption in your State—they feel that they must have a considerable margin of the amount down. They would not sell to anybody without a payment down. They would not sell the other lot to Mr. or Mrs. Kirchoff except for cash, and at a price to be named *of* they want it.

Yours truly,
(Signed) JOHN DE WITT, *Pres't.*

EXHIBIT 145, F. V. C.

BOSTON, *Nov.* 14, 1879.

Rob't B. Kendall, Esq., Chicago, Ill.

D'R SIR: We should like a full report upon the present condition of 682, Kirchoff. This is a case that must be fixed up before the end of the year, and we urge upon you the necessity of pushing the matter to a close.

* * * * * * *

We are anxious to have both disposed of as soon as possible.

Yours truly,
539 (Signed) JOHN E. DE WITT, *President.*
F. N.

EXHIBIT 146, F. V. C.

(Copy.)

BOSTON, *December 5th*, 1879.

E. A. Warfield, Esq., 133 La Salle St., Chicago:

Send valuation of Maher, also of Kirchoff, property, if any increas- since last valuation.

Send tax vouchers for recent charges. All in Saturday's mail.

(Signed) JOHN E. DE WITT, *Pres't.*
F. N.

Exhibit 147, F. V. C.

153 Tremont Street, Boston, *Dec.* 3, 1879.

E. A. Warfield, Esq.

Dear Sir: Your favor of the 26 at hand in reference to loan 682, Kirchoff. If he does not pay rent you have the usual remedy at hand—to put him out—and there is no reason why you should not.

540 Yours truly,

(Signed) JOHN E. DE WITT, *Pres't.*
W. G. R.

Exhibit 148, F. V. C.

(Copy.)

Dec. 5th, 1879.

E. A. Warfield, Chicago, Ill.

D'r Sir: We telegraphed you today (half-rate message): "Send valuation of Maher and also Kirchoff property, if any increase since last valuation. Send tax voucher for recent changes. All by Saturday's mail."

The Kirchoff property we shall be obliged to divide on our real-estate ledger, and we would ask you to separate the following items of expense, in order that they may appear in proper amounts against the different pieces, and any charges hereafter are to be treated in the same way: $32.57, $321.54, $302.09, $1,000, $3.83, $10, $21.91, $7.50, $20, $28, $17.40, $17.11, $141.93, $131.73, $82.16, $263.07, $123.64, $28.32 (this was a part of Hamilton $2,000),
541 $244, $153.40, $0.70, $5, $88, $1.95, $5, $2,200, $2.40 (expenses to Winnetka), $29, $176.52, $17.39, $3.12, $743.57, $129.04, $305.69, $362.33, $46.12, $6, $47.25, $0.65, $1.65, $389.90, $128.73, and $0.90.

Would also like separate valuations of bl'k 12 and E. 3 and one-tenth acres, bl'k 3, Lill and heirs of Diversy div'n of S. W. ½, N. W. ¼, sec. 29, T. 40, both having been appraised together at $15,000.

Yours truly,

(Signed) JOHN E. DE WITT, *Pres't.*
F. N.

Exhibit 149, F. V. C.

153 Tremont Street, Boston, *Dec.* 17*th*, 1879.

E. A. Warfield, Esq., Chicago, Ill.

Dear Sir: Loan No. 682. Your favor of 8th inst. has our attention. We cannot forward the vouchers as requested, for they are fastened in our report books, but we herewith enclose copies of the same, excepting those relating to taxes, with which you are, no doubt, familiar and can separate without our assistance.

542 Yours truly,

(Signed) DANIEL SHARP, *Vice-Pres't.*
B.

EXHIBIT 150, F. V. C.

153 TREMONT STREET, BOSTON, *Dec.* 23, 1879.

R. B. Kendall, Esq., 133 La Salle St., Chicago.

DEAR SIR: Your favor of the 12th inst. with copy of opinion in the Kirchoff (No. 682) case at hand and contents noted.

The "opinion" is today returned by express. Please lay it before Pres't De Witt for his examination.

Yours truly,
(Signed) DANIEL SHARP, *Vice-Pres't.*
C.

EXHIBIT 151, F. V. C.

Registered.

153 TREMONT STREET, BOSTON, *Dec.* 26, 1879.

E. A. Warfield, Esq., 133 La Salle St., Chicago.

DEAR SIR: Herewith find the two tax vouchers on No. 682,
543 asked for in your favor of the 23d inst.

Yours truly,
(Signed) DANIEL SHARP, *Vice-Pres't.*
C.

EXHIBIT 152, F. V. C.

153 TREMONT STREET, BOSTON, *Jan'y 8th*, 1880.

E. A. Warfield, Esq., Chicago, Ill.

D'R SIR: Yours of 5th inst. at hand regarding items on No. 682, Kirchoff property. As we have no vouchers at this office for the following items for taxes, we must again call for a subdivision of the same that we may charge up to the different pieces the proper amounts.

We would also like the valuations themselves.

Gen'l tax 1875	$354 11,	costs	24 79
Tax deed (Hamilton)	302 09,	"	
" " (Carbine)	1,000	"	
1st Lincoln park	25 34		1 78
Gen'l tax 1876 & forf	21 91		55
2d Lincoln park	17 11		85
Gen'l tax 1876	270 16		13 50
City specials	165 76,	costs	8 29
Gen. tax 1876	163 03,	"	8 15
" " 1872	117 75,	"	5 89
544 Tax deed (Haas)	153 40,	"	
Gage tax claims	2,200	"	
Tax deed	45	"	1 12
" "	45	"	2 25
" "	151 31,	"	7 57
Taxes, 1878	110 42,	"	2 76
" "	114 45,	"	2 87

There is a credit of $920 on acc't of taxes, which please subdivide and state which amounts it applies to, that hereafter we may not be calling for vouchers for amounts which are considered paid.

EXHIBIT 153, F. V. C.

153 TREMONT STREET, BOSTON, *Jan.* 13, 1880.

R. B. Kendall, Esq., 133 La Salle St., Chicago.

DEAR SIR: Your favor of the 10th inst. relative to 682 *682*, Kirchoff, at hand.

Vice-Pres't Sharp will be in your city in the course of a week or ten days, and you will please refer the matter to him.

The papers mentioned in your second favor of above date at hand, and note your remarks relative to No. 879.

545 Yours truly,

(Signed) JOHN E. DE WITT, *Pres't.*
C.

EXHIBIT 154, F. V. C.

153 TREMONT STREET, BOSTON, *January 16th*, 1880.

E. A. Warfield, Esq., Chicago, Ill.

D'R SIR: Yours of 13th inst. at hand in relation to items against property No. 682, Kirchoff.

As the vouchers "given Mr. Kendall long ago for use as evidence in the foreclosure case" are not at this end of the line, we must call upon you again to furnish us with such information as will assist us in making a correct subdivision of the amounts. The vouchers $110.42 and $114.45 were forwarded you Dec. 26, '79. Please ascertain on what particular property these amounts were paid and let us know. We are anxious to get this matter straightened out as soon as possible.

Yours truly,

(Signed) JOHN E. DE WITT, *President.*
F. N.

546 EXHIBIT 155, F. V. C.

(Copy.)

BOSTON, *February 5th*, 1880.

E. A. Warfield, Esq., Chicago, Ill.

DR. SIR: We have been looking over your receivership and rent account for January and we wish to call attention particularly to the following:

* * * * * * *

No. 682, Kirchoff, $317.25 due.

In the case of No. 682 you have been instructed to turn Kirchoff out unless rent was paid up, and we are at a loss to know why you give no heed to our wishes in this matter.

Please explain.

* * * * * * *

Yours truly,
(Signed) JOHN E. DE WITT, *Pres't.*
F. N.

Exhibit 156, F. V. C.

Boston, *March 2d,* 1880.

547 E. A. Warfield, Esq., Chicago, Ill.

D'r Sir: To which piece or pieces of the Kirchoff property does the 60c. for recording Q. C. deed, Hamilton to Co., apply? Charged under date of Feb. 28, '80.

Yours truly,
(Signed) JOHN E. DE WITT, *President.*
F. N.

Exhibit 157, F. V. C.

(Copy.)

Registered.

Boston, *March* 8, 1880.

E. A. Warfield, Esq., Chicago, Ill.

Dear Sir: Sunday favor at hand. Referring to yours of the 5th inst., we should have given the date of charge as 23d Feb. instead of 28th. We had Mr. Bliss' voucher in mind when writing for information, but confounded the dates.

* * * * * * *

Yours truly,
(Signed) JOHN E. DE WITT, *President.*
F. N.

548 Exhibit 158, F. V. C.

153 Tremont Street, Boston, *Mar.* 20, 1880.

Rob't B. Kendall, Esq., 133 La Salle St., Chicago.

Dear Sir: Quitclaim of tax title, Hamilton to Co., of portion of security to former loan 682, inclosed in your favor of the 18th inst., duly received.

Yours truly,
(Signed) DANIEL SHARP, *Vice-Pres't.*
C.

EXHIBIT 159, F. V. C.

BOSTON, *Ap'l 20th*, 1880.

E. A. Warfield, Esq., Chicago, Ill.

D'R SIR: Please inform us as to which particular portion of the Kirchoff property the $5.12 (charged to company Ap'l 14th) belongs.

Yours truly,
(Signed) DANIEL SHARP, *Vice-Pres't.*
F. N.

549 EXHIBIT 160, F. V. C.

BOSTON, *May 7th*, 1880.

E. A. Warfield, Esq., Chicago, Ill.

D'R SIR: We notice that the uncollected rent on the Kirchoff property is on the increase, and would ask why steps have not been taken to have the tenant removed. The matter has been brought to your attention more than once, and we desire that some action be taken at once to get a new party to take the house from whom rent can be collected.

Yours truly,
(Signed) JOHN E. DE WITT, *President.*
F. N.

EXHIBIT 161, F. V. C.

153 TREMONT STREET, BOSTON, *June 1st*, 1880.

E. A. Warfield, Esq.

DEAR SIR: Yours of the 28th, relative to Kirchoff, at hand. We think the only proper way for you to do is to take possession of the property that Kirchoff is now occupying.

Yours truly,
550 (Signed) JOHN E. DE WITT, *Pres't.*
B.

EXHIBIT 162, F. V. C.

153 TREMONT STREET, BOSTON, *June 9th*, 1880.

E. A. Warfield, Esq., Chicago, Ill.

D'R SIR: Yours of the 7th inst. at hand.

The deed form Mrs. Diversy conveys "the N. 15 acres of the N. E. quarter of the S. E. quarter and the E. half of the N. E. quarter of section 28, township 42 N., R. 13 E., of 3d P. M., excepting, however, from this conveyance so much of said E. half of N. E. quarter of section 28 as is described in a deed from the said Angela Diversy to Jacob Schmidt, dated the 21st day of Nov., 1870, and recorded in the recorder's office for said county of Cook, Book 631, p. 32, and also excepting a strip of land six rods wide heretofore conveyed to the Chicago & Milwaukee R. R."

Yours truly,
(Signed) JOHN E. DE WITT, *President.*
F. N.

551 EXHIBIT 163, F. V. C.

153 TREMONT STREET, BOSTON, *Oct.* 19, 1880.

Rob't B. Kendall, Esq., Chicago, Ill.

D'R SIR: We quote from Mr. Warfield's letter of Aug't 5, '80:

"The taxes on lot 26 of bl'k 28, in Rose's subd'n, W. ½ sec. 5, 39, 14, have been paid by Gage for some years. I think Mr. Hamilton understands that the Co. has no title to this lot. It is my impression that the title is good in the Co., subject to Gage tax deeds, but I may be in error."

A copy of the letter from which the above is taken was sent you a short time since, & we would like you to report on the title to the land above referred to. Please do so at once.

Yours truly,
(Signed) JOHN E. DE WITT, *President.*
F. N.

EXHIBIT 164, F. V. C.

BOSTON, *Nov.* 2, 1880.

Rob't B. Kendall, Esq., Chicago, Ill.

552 D'R SIR: Yours of 27th inst. at hand in relation to claim of the Government against a portion of the Kirchoff property, No. 682.

We cannot find that you state in your letter for what amount (or give an approximate of amount for which) the claim can be settled. If you can inforem us what the figures are, we can then determine where we stand.

Yours truly,
(Signed) JOHN E. DE WITT, *Pres't.*
F. N.

EXHIBIT 165, F. V. C.

BOSTON, *Nov. 4th*, 1880.

Rob't B. Kendall, Esq., Chicago, Ill.

D'R SIR: Yours of 2d inst., with 15 master's cert's of property, No. 682, Kirchoff, at hand.

We approve everything from beginning of your letter to the period after your name.

Yours truly,
(Signed) JOHN E. DE WITT, *President.*
F. N.

553 EXHIBIT 166, F. V. C.

BOSTON, *Nov. 11th*, 1880.

Rob't B. Kendall, Esq., Chicago, Ill.

D'R SIR: Your draft for master's commissions, costs, &c., in the Kirchoff case has been paid.

Kindly forward the receipted bill for the $907.77.

Yours truly,
(Signed) JOHN E. DE WITT, *President.*
F. N.

EXHIBIT 167, F. V. C.

BOSTON, *Nov. 15*, 1880.

Rob't B. Kendall, Esq., Chicago, Ill.

D'R SIR: Yours of 13th at hand, with receipted bill for costs, com's, &c., No. 682, Kirchoff.

Yours truly,
(Signed) JOHN E. DE WITT, *President.*
F. N.

554 EXHIBIT 168, F. V. C.

Statement of Account of Lot 2, Block 24, C. T. Sub., Kirchoff, to Oct. 1, '86.

1876.		DR.	
Nov.	25.	Tax deed, Hamilton	390 93
Dec.	13.	1st, L. park	13 51
1877.			
Feb.	5.	" "	2 40
Aug.	1.	Examination for judg't	1 52
Sept.	17.	Abstract	12 53
	25.	2d, L. park	10 72
Oct.	13.	City special & costs	51 50
	16.	State & county tax & costs	107 31
	22.	" " " "	77 50
Dec.	31.	Costs	4 29
1878.			
Feb.	22.	Abstract	53 33
M'ch	14.	Tax deed & recording	96 60
July	11.	Court fees	76
"	20.	Tax paid Gage	332 97
Aug't	10.	Court fees	4 37
Oct.	12.	3d, L. park & costs	12 25
	24.	1877, general tax & costs	175 92
Nov.	22.	1873 & '4, " " "	166 35

555

Month	Day	Item	Amount
1879.			
Feb.	3.	Abstract	91
June	14.	Legal expense	1 52
Aug.	11.	Tax deed & costs	59 27
	25.	Recording	37
Nov.	3.	1878, taxes & forf	199 35
"		Special & costs	128 73
	10.	Recording	14
1880.			
Feb.	16.	Court fees	1 13
	28.	Recording	37
M'ch	18.	"	75
Apr.	14.	Marshal's fees	92
May	31.	General taxes, 1879	82 25
"		5, Lincoln park	10 47
"		Fire insurance	18 75
Nov.	9.	Master's fees	137 39
1881.			
Apr.	30.	Taxes, 1880	125 63
"		Specials	10 07
Feb.	2.	Abstract	20 00
"		Cancelling tax ctfs	1 30
May	9.	Fire insurance	12 00
Dec.	28.	Tax deed	2 68
"		" "	3 21

556

Month	Day	Item	Amount
"		" "	3 20
"		Expenses procuring deed	15 00
1882.			
Jan.	21.	Recording master's deed	90
"		Master's charge for deed	2 40
May	1.	Tax of 1881	84 43
"		Lincoln Park tax	6 94
June	21.	Court costs	1 50
July	17.	Abstract	7 50
Oct.	1.	Insurance	8 00
	16.	Deed	100 00
Dec.	19.	Cancel judg't	25
	12.	Abstract	8 00
1883.			
Apr.	3.	Carpenter repairs	200 00
May	21.	Tax 1882 & costs	141 75
"		8th, Lincoln park	9 51
July	14.	Water tax	60 50
Nov.	8.	Fire insurance	15 00

This statement does not include balance of interest or cost of collecting rent.

1884.				
Apr.	28.	Taxes 1883	175	22
"		9, Lincoln park	8	88
"		Cost on 1883 taxes	4	61
May	24.	Paid U. S. Gov't for deed	500	00
557				
June	20.	Sidewalk ass't	40	32
Aug.	30.	Advertising sale by U. S. Gov't	19	50
Sept.	22.	Recording Gov't deed	1	05
Oct.	27.	Fire insurance	15	00
	18.	Notorial affidavit		25
	22.	Constable fees (Donlin case)	25	00
Nov.	20.	Justice fees " "	2	75
	21.	Lee & Lee, reporters	10	10
Dec.	31.	Getting possession of barn	3	40
1885.				
M'ch	24.	Repairing roof	55	00
Apr.	27.	Taxes 1884 & costs	176	84
June	25.	Repairing chimney	6	00
Sept.	7.	Legal expenses	41	50
Oct.	16.	Fire insurance	15	00
Sept.	26.	Water tax	7	50
Oct.	29.	Special tax	68	13
1886.				
Feb'y	6.	Costs on distress warrant	5	00
M'ch	12.	Repairs on barn	12	00
Apr.	15.	Taxes 1885 & costs	186	34
"		Special tax	8	08
June	3.	" "	475	49
558				
1879.		Cr.		
Jan'y	23.	Rebate on ac. taxes	139	34
Dec.	23.	" " "	70	95
1880.				
May	28.	" " fire ins	18	75
		Rent for 1883	480	00
		" " 1884	541	00
		" " 1885	720	00
		" to Oct. 1, '86	300	

Statement of Account Lot 4, Block 21, C. T. Sub., Kirchoff, to Oct. 1, '86.

Dr.

1876.				
Nov.	25.	Tax deed, Hamilton	232 70	
Dec.	1.	1st, Lincoln park	8 00	
1877.				
Feb'y	5.	" "	1 43	
Aug.	1.	Examination of judg't	90	
Sept.	17.	Abstract	7 47	
	25.	2d, Loncoln Park tax	6 39	
Oct.	13.	City specials & costs	30 66	
	16.	State & county tax & costs	63 88	
	22.	" " " "	46 14	
Dec.	31.	Costs	2 55	

This statement does not include balance of interest.

559

1878.			
Feb'y	22.	Abstract	31 67
Mar.	14.	Tax deed & recording	57 50
July	11.	Court fees	45
	20.	Tax paid Gage	198 20
Aug.	10.	Court fees	2 61
Oct.	12.	3d, L. park & costs	5 13
	24.	1877, general taxes & costs	47 02
Nov.	22.	1883 & '4, taxes & costs	63 85
1879.			
Feb.	3.	Abstract	54
June	14.	Legal expenses	90
Aug.	11.	Tax deed & costs	99 61
	25.	Recording	23
Nov.	3.	1878, tax & forf.	42 23
	10.	Recording	08
1880.			
Feb.	16.	Court fees	68
	28.	Recording	23
M'ch	18.	"	45
Apr.	14.	Marshal's fees	46
May	31.	General taxes, 1879	82 26
"		5th, Lincoln park	4 18
Nov.	9.	Master's fees	81 78

560

1881.			
Apr.	30.	Tax 1880	41 21
"		Special	4 02
Feb.	2.	Abstract	20 00
"		Cancelling tax ctfs.	1 30

Oct.	29.	Sidewalk ass't	35 00
Dec.	28.	Tax deed	3 21
"		" 2	3 20
"		Expense procuring deed	15 00
1882.			
Jan.	21.	Recording master's deed	90
"		Master's charges for deed	2 40
May	1.	Taxes 1881	84 43
"		Lincoln park	6 94
Dec.	19.	Recording	60
1883.			
May	21.	Tax 1882 & costs	72 97
"		8. Lincoln park & costs	4 22
1884.			
May	28.	Taxes 1883 & costs	49 54
"		9, L. park & costs	3 55
1885.			
Ap'l	27.	Taxes 1884 & costs	49 86
Oct.	29.	Special tax	3 80
561			
1886.			
Apr.	15.	Taxes 1885 & costs	51 28
"		Special	3 23
June	3.	"	10 28
1879.		Cr.	
Jan.	23.	Rebate on ac. taxes	82 15
Dec.	23.	" " "	42 23

EXHIBIT 169, F. V. C.

Union Mutual Life Ins. Co., No. 133 La Salle street, room 15.

John E. De Witt, president; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

CHICAGO, ILL., —— —, 187–.
10, 27, '79.

Union Mutual Life Insurance Company, [133 La Salle St.*]

John E. De Witt, pres.; Daniel Sharp, vice-pres.; J. P. Carpenter, secretary; E. A. Warfield, financial agent; R. B. Kendall, attorney.

[* Words enclosed in brackets in pencil in copy.]

562 *Stipulation.*

STATE OF ILLINOIS, }
Cook County. }

In the Circuit Court of Cook County.

ELIZABETH KIRCHOFF *vs.* THE UNION MUTUAL LIFE INSURANCE COMPANY.	General No., 41522. Term No., 129.

Bill to inforce specific performance of contract.

A notice in this case, under our statute, having heretofore been given to take the deposition of C. L. Drummond, of Portland, Maine, on oral interrogatories, on the 27th inst., it is hereby stipulated that said deposition may be taken on the twenty-ninth instead of the twenty-seventh.

It is also stipulated that the deposition of Mr. E. R. Seccomb shall be taken at the same time & before the same officer who takes the deposition of C. L. Drummond, said last deposition being taken by consent and notice waived, subject to the usual exceptions.

It is also stipulated that the defendant shall not object to a continuance of the present case if the complainant shall want a continuance.

Chicago, Sept. 21, 1886.

LEONARD SWETT,
Sol. for the Defendants.
W. S. HARBERT,
Sol'r for Comp't.

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563 STATE OF ILLINOIS, } *ss:*
Cook County, }

Circuit Court of Cook County, August Term, 1886.

ELIZABETH KIRCHOFF *vs.* UNION MUTUAL LIFE INSURANCE COMPANY.	In Chancery.

To W. S. Harbert, solicitor for complainant:

Take notice that on the thirteenth day of September, 1886, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, the undersigned will sue out of the office of the clerk of said court a *dedimus potestatum* or commission under the seal of said court, directed to Fred. V. Chase, a notary public of the city of Portland, in the county of Cumberland and State of Maine, or to any judge, master in chancery, notary public, or justice of the peace of the county last named, to take the depositions of John E. De Witt and Charles L. Drummond upon interrogatories to be propounded to said witnesses orally, to be read in evidence on the part of the said defendant on the trial of the above-entitled cause.

Further take notice that said depositions will be taken at the office of the Union Mutual Life Insurance Co., in the city of Portland, county & State aforesaid, and the examination of said 564 witnesses under said commission will be begun on Monday, the twenty-seventh day of September, 1886, at 10 o'clock a. m., and will continue from day to day until completed, at which time and place you may appear and cross-examine if you see fit.

Dated September 3d, 1886.

SWETT, GROSCUP & SWETT,
Solc's for Defendant.

Rec'd a copy of above this 3d day of September, 1886.

W. S. HARBERT,
Sol'r for Compl't.

Oral Int. Dedimus.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

The People of the State of Illinois to Fred. V. Chase, Esq., notary public, Portland, Maine:

Whereas it has been represented to us that John E. De Witt and Charles L. Drummond are material witnesses in a certain cause now depending in our circuit court of Cook county, in and for the county of Cook aforesaid, between Elizabeth Kirchoff, plaintiff, and Union Mutual Life Insurance Company, defendant, and that the 565 said witnesses reside at Portland, Maine, aforesaid, without the State of Illinois, and that their personal attendance cannot be procured at the trial of the said cause: Now, know ye that we, in confidence of your prudence and fidelity, have appointed you a commissioner to examine the said witnesses, and do therefore authorize and require you to cause the said witnesses to come before you, at the office of said insurance company, at the city of Portland, State of Maine, on Monday, Sept. 27th, 1886, 10 o'clock a. m., and on the oath or affirmation of the said witnesses, by you first duly in that behalf administered, faithfully to take the deposition of the said witnesses upon all interrogatories to be propounded to them orally, pursuant to the notice attached to these presents, both on the part of the said plaintiff and of the said defendant, and none others, and the same when thus taken, together with this commission and the said interrogatories, to certify into our said circuit court of Cook county with the least possible delay.

[SEAL.] Witness Henry Best, clerk of our said court, and the seal thereof, at Chicago, in said county, this 13th day of September, A. D. 1886.

HENRY BEST, *Clerk.*

And the defendant thereupon offered in evidence the contract between the Union Mutual Life Insurance Company and 566 Edwin A. Warfield, dated 21st day of February, 1878.

To the introduction of which said contract the complainant then and there objected as immaterial, which objection the court overruled; to which ruling the complainant then and there excepted, and the said contract was then read in evidence and is in the words and figures as follows:

Form 164.

Union Mutual Life Insurance Co. of Maine.

This agreement made this 21st, day of February A. D. 1878 by and between the Union Mutual Life Insurance Company of Maine, party of the first part, and Edwin A. Warfield party of the second part, witnesseth.

That the said party of the first part hereby agrees to employ the said party of the second part at the annual comcensation of thirty-five hundred dollars, payable in semi-monthly installments, on the first and fifteenth of each and every month during the continuance of this agreement

That the said party of the first part further agrees to pay the necessary travelling expenses actually incurred by the said party of the second part, while actually engaged in the prosecution of the business of said party of the first part, away *form* his place of residence, which for the purposes of this contract is known as Chicago, Cook Co. Illinois.

That the said party of the second part hereby agrees to
567 enter the service of the said party of the first part and to devote his whole time and energies in advancing the interest of the said party of the first part in such manner as may be directed by the officers of said company.

It is further understood and agreed that if the said party of the second part has at any time held any relation to this company, as agent or subagent, or broker, or otherwise, that the acceptance of this appointment will be understood to be and shall be independent thereof, and as an abrogation and annulling of such relation in every respect, and said party of the second part shall act as agent solely under this appointment and contract.

Either party hereto may terminate this agreement and the appointment hereunder, unless the same be sooner terminated by death of said party of second part, or by mutual consent, at any time during its continuance, by giving to the other party thirty days' notice, in writing, to that effect, and this contract to take effect, April 1st, 1878.

In witness whereof, the said party of first part has hereunto, in duplicate, caused the same to be executed by its president and secretary; and the said party of second part has hereunto, in duplicate, set his hand and seal, this twelfth day of March, 1878.

JOHN E. DE WITT, *President.*
568 J. P. CARPENTER, *Secretary.*
E. A. WARFIELD. [SEAL.]

Sealed and delivered in the presence of—
ALBERT G. MILTON.

And the defendant thereupon offered in evidence a contract between the Union Mutual Life Insurance Company and Robert B. Kendall, dated April 1st, A. D. 1878; to which contract the complainant then and there objected as immaterial; which objection the court then and there overruled; to which ruling the complainant then and there excepted, and the said contract was then read in evidence and is in words and figures as follows:

Form 164.

Union Mutual Life Insurance Co. of Maine.

This agreement, made this first day of April A. D. 1878 by and between the Union Mutual Life Insurance Company of Maine, party of the first part, and Robert B. Kendall party of the second part, witnesseth:

That the said party of the first part hereby agrees to employ the said party of the second part at the annual compensation of twenty-five hundred dollars, payable in semi-monthly installments, on the first and fifteenth of each and every month during the continuance of this agreement.

569 That the said party of the first part further agrees to pay the necessary traveling expenses actually incurred by the said party of the second part, while actually engaged in the prosecution of the business of said party of the first part, away from his place of residence which for the purpose of this contract is known as Chicago, Illinois.

That the said party of the second part hereby agrees to enter the service of the said party of the first part, and to devote his whole time and energies in advancing the interest of the said party of the first part in such manner as may be directed by the officers of said company.

It is further understood and agreed, that if the said party of the second part has at any time held any relation to this company, as agent or subagent, or broker, or otherwise, that the acceptance of this appointment will be understood to be and shall be independent thereof, and as an abrogation and annulling of such relation in every respect, and said party of second — shall act as attorney and counsellor at law solely under this appointment and contract.

Either party hereto may terminate this agreement and the appointment hereunder, unless the same be sooner terminated by death of said party of second part, or by mutual consent, at any time during its continuance, by giving to the other party thirty days' notice, in writing, to that effect.

570 In witness whereof, the said party of first part, has hereunto, in duplicate, caused the same to be executed by its president and secretary; and the said party of second part has hereunto, in duplicate, set his hand and seal, this first day of April, 1878.

JOHN E. DE WITT, *President.*
J. P. CARPENTER, *Secretary.*
ROB'T B. KENDALL.

Sealed and delivered in the presence —
H. HOWARD BENEDICT.

It is agreed that the letter dated March 21, 1879, from Kendall to the company, may go in by stipulation subject to the same objections as the other exhibits. Said letter was then read in evidence and is in words and figures as follows:

CHICAGO, Ill., *March* 21, 1879.

Union Mutual Life Insurance Company, 158 Tremont St., Boston:

In reply to the president's letter of the 14th inst., calling attention to loan 682, I would say that Mrs. Diversy will agree to settlement on basis proposed some time ago to the company by me and assented
to by letter of vice-president, viz: Let her keep 40 acres of
571 her farm and execute quitclaim of the rest; Kerchoff and
wife to quitclaim all their property covered by our mortgage.

The old trust deed on the Diversy farm prior to ours to be released, &c., and everything made tight and safe.

Mr. Weckler told me day before yesterday that they would settle that way. The Burroughs case has given me much trouble, owing to Burroughs' delaying policy, but as soon as the Larned matter is settled we can go on with the foreclosure, and I will give Burroughs no rest until the thing is finished.

I am, very respectfully, yours, &c.,

ROBERT B. KENDALL.

And the defendant thereupon offered and read in evidence the original quitclaim deed from Mrs. Kirchoff and husband to the company; which said deed is in words and figures as follows:

Quitclaim Deed.

This indenture witnesseth that the grantors Julius Kirchoff and Elizabeth Kirchoff his wife, one of the heirs of Michael Diversy, deceased of the city of Chicago, in the county of Cook and State of Illinois, for the consideration of one dollar and other valuable con-
sideration convey and quitclaim to the Union Mutual Life
572 Insurance Company a corporation created and existing under
and by virtue of the laws of the State of Maine, all the following-described real estate situate in said county of Cook, to wit: Lots one (1) two (2) three (3) ten (10) eleven (11) and twelve (12) in block four (4) in Knokke and Gardner's subdivision of twenty (20) acres north and adjoining the south thirty (30) acres of the west half of the northwest quarter of section number twenty-eight (28) township forty (40) north, range fourteen (14) east of third principal meridian; also lot number twenty-six (26) in O. J. Rose's subdivision of the east half of block twenty-eight (28) in the canal trustees' subdivision of west part of section five (5), township thirty-nine (39) north, range fourteen (14) east of the third principal meridian; also lot ten (10) in block sixty-four (64) original town of Chicago; with the three-story brick building situate thereon; also block twelve (12), and the east three and one-tenth ($3\frac{1}{10}$) acres of block three (3) on William Lill and heirs of Michael Diversy's division of the southwest half of the northeast quarter of section twenty-nine (29)

township forty (40) north fourteen (14) east of third principal meridian.

Also lot three (3) in the subdivision of the northeast corner of block fifty-three (53) in Kinzie's addition to Chicago.

Also lots number two (2) and four (4) in block number
573 twenty-one (21) in the canan trustees' subdivision of the south
fraction of section three (3) township thirty-nine (39), north range fourteen (14) east of the third principal meridian hereby releasing and waiving all right under and by virtue of the homestead exemption laws of said State of Illinois.

This conveyance is given and accepted in satisfaction of certain indebtedness of the said Julius Kirchoff and Elizabeth Kirchoff secured by a trust deed of said premises given by the said Julius Kirchoff and Elizabeth Kirchoff his wife and Angela Diversy to Levi D. Boone, trustee, dated the eight- day of May in the year eighteen hundred and seventy-one, and recorded in the recorder's office for the said county of Cook in Book 649 of Deeds page 131.

Dated this fourth (4th) day of September in the year eighteen hundred and seventy-nine.

JULIUS KIRCHOFF. [SEAL.]
ELIZABETH KIRCHOFF. [SEAL.]

STATE OF ILLINOIS, } *ss:*
County of Cook, }

I, Harry Rubens, a notary public in and for said county, in the State aforesaid, do hereby certify that Julius Kirchoff and Elizabeth Kirchoff, personally known to me to be the same persons whose
names are subscribed to the foregoing instrument, appeared
574 before me this day in person and acknowledged that they
signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this fifth day of September, A. D. 1879.

[SEAL.] HARRY RUBENS,
Notary Public.

Endorsed.

STATE OF ILLINOIS, } *ss:*
Cook County, }

No. 244,146.

Recorded Nov. 8, 1879, at 10 o'clock *p.* m., Book 902 of Records, page 494.

JAS. W. BROCKWAY, *Recorder.*

And the defendant thereupon offered and read in evidence the blank quitclaim deed sent by Kendall in his letter of November 1st, 1879, to the defendant company; which said deed is in words and figures as follows:

Blank Q. C. Deed.

575 Know all men by these presents that the Union Mutual Life Insurance Company, a corporation existing under and by virtue of the laws of the State of Maine, in consideration of the sum of seven thousand dollars to it paid by Elizabeth Kirchoff wife of Julius Kirchoff of Chicago, in the county of Cook and State of Illinois, the receipt of which sum is hereby acknowledged, doth hereby remise, release, quitclaim and convey unto the said Elizabeth Kirchoff and her heirs and assigns, the following-described land and premises situate in the said city of Chicago, in the county of Cook and State of Illinois, to wit:

Lot number two (2) in block number twenty-one (21) in canal trustees' subdivision of south fraction of section three (3) township thirty-nine (39), north range fourteen (14) east of 3rd principal meridian.

To have and to hold all and singular the premises above conveyed to the said Elizabeth Kirchoff and her heirs and assigns to their own use and behoof forever.

In witness whereof the said Union Mutual Life Insurance Company hath caused its corporate seal to be hereunto affixed and these presents to be subscribed by its president duly authorized by vote of the finance committee of the board of directors of said corporation, a certificate of which is hereunto attached this fourth day of September in the year eighteen hundred and seventy-nine.

UNION MUTUAL LIFE INSURANCE
COMPANY,
By —— ——, *President*. [L. S.]

576 COMMONWEALTH OF MASSACHUSETTS, }
Suffolk County. }

I, —— ——, a notary public in and for the county and Commonwealth aforesaid, do hereby certify that —— ——, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act and deed as president of the Union Mutual Life Insurance Company and as the act and deed of said company for the uses and purposes therein set forth.

Given under my hand and notarial seal the — day of ——, in the year eighteen hundred and —.

[L. S.] —— ——.

Extract from Article 9 of the By-Laws of the Union Mutual Life Insurance Company.

The financial committee may authorize the foreclosure of mortgages in any manner provided by the laws of the State or county in which the mortgaged property is situated, and may direct the sale of any real estate held by the company or in trust for the company; and when they shall direct any such sale of property held by 577 the company the president, and in his absence the vice-president, is authorized to execute the proper instrument of conveyance.

Attest:

[L. S.] —— ——, *Secretary.*

At a meeting of the finance committee of the board of directors of the Union Mutual Life Insurance Company, held at the office of said directors, in the city of Boston, on the — day of ——, in the year eighteen hundred and ——, the foregoing deed was approved and the president directed to execute, acknowledge, and deliver the same.

Attest: —— ——,

Secretary of the Finance Committee.

STATE OF ——, }
—— *County,* } *ss:*

No. —.

This instrument was filed for record in the recorder's office of —— county aforesaid on the — day of ——, A. D. 187–, at — o'clock — m., and recorded in Book — of —, on page —.

—— ——, *Recorded.*

578 And the said defendant thereupon offered and read in evidence quitclaim deed from Mrs. Diversy to the defendant company, dated July 1st, 1879, acknowledged September 5, 1879, and recorded September 12, 1879; which said deed is in words and figures as follows:

Q. C. Deed.

This instrument made this forst day of July in the year of our Lord one thousand eight hundred and eighty-nine between Angela Diversy—widow, of the city of Chicago in the county of Cook and State of Illinois party of the first part and the Union Mutual Life Insurance Company a corporation created and existing under and by virtue of the laws of the State of Maine party of the second part witnesseth:

That the said party of the first part for and in consideration of the sum of one dollar in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, and the said party, of the second part forever released and discharged therefrom, has granted, bargained, aliened and confirmed and by these presents doth grant, bargain, sell, remise, release, convey, alien and confirm unto the said party of the second part and to its heirs and assigns forever all the following described lots, pieces or parcels of land situated in the county of Cook and State of Illinois and known and described as follows, to wit:

579 The north fifteen (15) acres of the northeast quarter of the southeast quarter and the east half of the northeast quarter of section twenty-eight (28) township forty-two (42) north range thirteen (13) east of third principal meridian, excepting however from this conveyance so much of said east half of northeast quarter of section twenty-eight (28) as is described in a deed from the said Angela Diversy to Jacob Schmitt, dated the twenty-first day of November in the year eighteen hundred and seventy and recorded in the recorder's office for said county of Cook in Book 631, page 32 and also excepting a strip of land six rods wide heretofore conveyed to the Chicago and Milwaukee railroad.

This conveyance is given and accepted in satisfaction of certain indebtedness of the said Angela Diversy secured by a trust deed of said premises given by Julius Kirchoff and Elizabeth Kirchoff his wife, and the said Angela Diversy, to Levi D. Boone, trustee, dated the eighth day of May in the year eighteen hundred and seventy-one and recorded in the recorder's office for the said county of Cook in Book 649 of Deeds, page 131.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents issues and profits thereof; and all the estate right, title, interest,
580 claim, or demand whatsoever of the said party of the first part either in law or equity of in and to the above-bargained premises, with the hereditaments and appurtenances.

To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part and its assignes forever.

And the said Angela Diversy party of the first part for herself and her heirs, executors and administrators does covenant, grant, bargain and agree to and with the said party of the second part and its assigns that at the time of the ensealing and delivery of these presents she is well seized of the premises above conveyed as of a good, sure, perfect, absolute and indefeasible estate of inheritance in law, in fee-simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants bargains, sales, liens and encumbrances of what kind or nature soever; and the above-bargained premises in the quiet and peaceable possession of the said party of the second part and its assigns against all and every other person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

Except as to taxes and assessments and the trust deed above mentioned.

581 And the said party of the first part hereby expressly waives and releases any and all right, benefit, privilege, advantage and exemption under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise.

In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

ANGELA DIVERSY. [SEAL.]

Signed, sealed, and delivered in the presence of—

——— ———.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

I, Adam J. Weckler, a notary public in and for the said county, in the State aforesaid, do hereby certify that Angela Diversy, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed, and delivered the said instrument as her free and voluntary act — the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this fifth (5th) day of September, A. D. 1879.

[SEAL.] ADAM J. WERKLER,
Notary Public.

582 No. 236,548. Filed for record this 12th day of Sept., A. D. 1879, at 9 o'clock a. m.

JAS. W. BROCKWAY, *Recorder.*

STATE OF ILLINOIS, } *ss:*
County of Cook, }

I, Wiley S. Scribner, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the twelfth day of September, A. D. 1879, as document No. 236,548 and recorded in Book 946 of Records, at page 371.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this ninth day of March, A. D. 1887.

WILEY S. SCRIBNER, *Recorder.*

And the said defendant offered and read in evidence a deed of release from Levi D. Boone to Angela Diversy, dated June 9, 1879, recorded September 12, 1879; which said deed is in words and figures as follows:

Release Deed.

583 Know all men by these presents that I, Levi D. Boone, of Chicago in the county of Cook and State of Illinois the trustee named in a certain trust deed executed by Angela Diversy, Elizabeth Kirchoff and Julius Kirchoff dated the eight- day of May A. D. 1871 and recorded in the recorder's office for the county of Cook in the State of Illinois in Book 649 of Deeds, page 131, in con-

sideration of one dollar to me paid by the said Angela Diversy, the receipt whereof is hereby acknowledged, do hereby remise, release, and quitclaim unto the said Angela Diversy all the right title and interest derived by said trust deed in and to the following-described land and premises to wit.

The northwest quarter of the southeast quarter of section twenty-eight (28) township forty-two (42) north range, thirteen (13) east of the third principal meridian and situate lying and being in the county of Cook and State of Illinois.

In witness whereof I hereunto set my hand and seal this ninth day of June A. D. 1879.

LEVI D. BOONE, *Trustee.* [SEAL.]

STATE OF ILLINOIS, } *ss:*
Cook County, }

I, Robert B. Kendall, a notary public in and for the said county, in the State aforesaid, do hereby certify that Levi D. Boone, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in 584 preson and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this fifth day of [SEAL.] September, in the year eighteen hundred and seventy-nine.

ROB'T B. KENDALL.

No. 236,550. Filed for record September 12, A. D. 1879, 9 o'clock a. m.

JAS. W. BROCKWAY, *Recorder.*

STATE OF ILLINOIS, } *ss:*
County of Cook, }

I, Wiley S. Scribner, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the twelfth day of September, A. D. 1879, as document No. 236,550, and recorded in Book 929 of Record-, at page 97.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this ninth day of March, A. D. 1887.

WILEY S. SCRIBNER, *Recorder.*

585 Mr. GROSSCUP: I believe it appears in the evidence that all the Kirchoff property was appraised, and that the Rees appraisement of the homestead was $7,500 and of the Tower Place lot $2,500. If not, that may be understood.

The COURT: I understood it to be a fact.

And thereupon the wit*h*ess Julius Kirchoff was recalled by complainant, and, being examined in chief by Mr. Harbert, testified as follows:

Q. You said in your testimony that your wife borrowed $60,000. Please state who used that money.

A. We took the money on the business at 81 Michigan avenue.

Q. What business—your business?

A. Yes, where I was a partner. There was other brothers—three brothers—and Mrs. Kinney; and the second time we only received about $44,000; the other was commission, and we took it on sixty days or something like that; I don't know.

Mr. Grosscup: What is that?

A. We took first $60,000.00 on ninety days' time, and there was a great discount about it; and as we had plenty of money in the business we thought we could make it by ninety days—that we could collect quick; and my brother asked me one day whether I could help him with $25,000.00, and I said, "We have got plenty of money standing out; why don't you go and collect?"

Mr. Harbert: Well, never mind; answer this question: Did you use individually all the money that you got out of this loan?

586 A. We put it right in, the same day—in the bank on the corner of La Salle and Lake streets.

The Court: To the credit of the firm?

A. To the credit of the firm. They said they wanted $25,000.00, and I said, "You might as well have it."

Mr. Harbert: Have you ever paid it back to your wife?

A. Well, she never saw a cent of it nor did I; my wife never saw a cent of it or neither I.

Cross-examination.

By Mr. Grosscup:

Q. Were you a member of that firm?

A. Yes, sir.

Q. Was your wife a member of that firm?

A. No, sir; no member. I even take a mortgage on my house, and after ninety days we took this from Boone from the Union Mutual; we didn't take it originally from him.

Q. Who was the firm composed of?

A. Julius Kirchoff, Brothers and Company.

Q. Who was the company?

A. Well, that was the firm, Julius Kirchoff and three brothers—Gusta*d*, Frederick, and August—and John Kenney; he used to be my partner when we were in the distilling business, so we called that the company.

Q. Was there anybody else in the company?

587 A. No, sir; we five.

Q. Was your wife in the company?

A. No, sir; she even did not take a mortgage on it, which she could have taken.

The COURT: Gentlemen, there is a letter containing a certain proposition contained in Kendall's letter, which Mr. Kendall says he showed, or it was made known to Mr. Kirchoff. Was he asked about that? Does it appear in his testimony?

Mr. HARBERT: I will ask him.

Q. Did ever anybody tender back to you the quitclaim deed which you had executed to the company?

A. Well, I can't remember so well about that. I know there was talk, but I said, "I will stick to my old contract that I have made to give him a quitclaim deed — take the homestead. I don't know whether he has offered any, but I wanted my deed from the company. If he offered it to me I said I wanted my deed.

Q. That is the deed that he had sent to the company?

A. On that consideration we only give them the quitclaim deed, to get out of it, or else we would never have given it, because I had talked with Mr. De Witt myself.

Q. You gave him the quitclaim deed to send off?

A. Yes, sir; to the Union Mutual Life Insurance Company.

Q. Your and your wife did?

A. Yes, sir.

588 Q. Now, did he ever offer that quitclaim back to you?

A. Well, I cannot remember so very well; I remember there was some talk about it, but I said it was settled.

Q. Did you ever see that deed again?

A. No, sir; never. I never seen it again; I never saw it again; never.

And the above and foregoing is all the testimony and evidence adduced by said parties on the hearing of said cause.

Given under my hand and seal this 10th day of Sept., A. D. 1887.

M. F. TULEY, [SEAL.]
Judge Cir. Ct., C'k C'ty, Ills.

And on the same day, to wit, the 3d day of October, A. D. 1887, there was filed in said court a certain appeal bond, which is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, Elizabeth Kirchoff and Benjamine F. Jacobs, of the county of Cook and State of Illinois, are held and firmly bound unto the Union Mutual Life Insurance Company of the State of Maine in the penal sum of three hundred (300) dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our
589 heirs, executors, and administrators, jointly, severally, and firmly by these presents.

Witness our hands and seals this 3d day of September, A. D. 1887.

The condition of the above obligation is such that whereas the said Union Mutual Life Insurance Company did, on the twelfth day of July, A. D. 1887, in the circuit court of Cook county, in the State aforesaid, and of the June term thereof, A. D. 1887, obtain a decree against the above-bounden Elizabeth Kirchoff dismissing her certain bill, theretofore filed in said court against said Union Mutual Life Insurance Company, for want of equity and decreeing that said Union Mutual Life Insurance Company recover from her its costs in that behalf expended, from which said decree of the said circuit court of Cook county the said Elizabeth Kirchoff has prayed for and obtained an appeal to the supreme court of said State:

Now, therefore, if the said Elizabeth Kirchoff shall duly prosecute her said appeal with effect and, moreover, pay the amount of the costs, interest, and damage rendered and to be rendered against her in case the said decree shall be affirmed in said supreme court, then the above obligation to be void; otherwise to remain in full force and virtue.

ELIZABETH KIRCHOFF. [SEAL.]
BENJAMINE F. JACOBS. [SEAL.]

Approved this 10th day of Sept., 1887.

M. F. TULEY,
Judge Cir. Ct., C'k C'ty, Ills.

590 STATE OF ILLINOIS, }
Cook County, } *ss:*

I, Henry Best, clerk of the circuit court of Cook county and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete transcript of a certain certificate of evidence and appeal bond in a certain cause lately pending in said court, on the chancery side thereof, between Elizabeth Kirchoff, complainant, and Union Mutual Life Insurance Company, defendant.

[COURT SEAL.] In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 10th day of October, 1887.

HENRY BEST, *Clerk.*

At a supreme court begun and held at Ottawa on Tuesday, the sixth day of March, in the year of our Lord one thousand eight hundred and eighty-eight, within and for northern grand division of the State of Illinois.

Present: Benj. R. Sheldon, chief justice; John M. Scott, justice; John H. Mulkey, justice; Simeon P. Shope, justice; John Scholfield, justice; Alfred M. Craig, justice; Benj. D. Magruder, justice; George Hunt, attorney general; Lawrence Morrissey, sheriff; Alfred H. Taylor, clerk.

591 Be it remembered, to wit, on the 16th day of June, A. D. 1888, the same being one of the days of the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

ELIZABETH KIRCHOFF *vs.* UNION MUTUAL LIFE INSURANCE COMPANY.	No. 1715. Appeal from Cook ——.

And now, on this day, the court, having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, find that the said appeal is not well taken.

Therefore it is considered by the court that the appeal herein be and the same is hence dismissed, and that *procedendo* be awarded, with leave to said appellant to withdraw the record herein filed.

And it is further considered by the court that the appellee recover of and from the said appellant its costs by it in this behalf expended, and that it have execution therefor.

I, Alfred H. Taylor, clerk of the supreme court of the State of Illinois, do hereby certify that the foregoing is a true copy of the final order of the said supreme court in the above-entitled cause of record in my office.

592 In testimony whereof I have set my hand and affixed the said seal of the supreme court, at Ottawa, this 15th day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

[COURT SEAL.]

A. H. TAYLOR,
Clerk of the Supreme Court.

In the Appellate Court of Illinois, First District, October Term, A. D. 1889.

ELIZABETH KIRCHOFF, Plaintiff in Error, *vs.* UNION MUTUAL LIFE INSURANCE COMPANY, Defendant in Error.	Assignment of Errors.

And now comes the said Elizabeth Kirchoff, plaintiff in error, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

1. The court erred in not entering a decree in conformity with the prayer of the bill.

2. The court erred in dismissing complainant's bill for want of equity.

3. The court erred in refusing leave to file the proposed amended bill.

4. The court erred in refusing to grant complainant any relief whatever.

593 5. The court erred in admitting improper evidence over complainant's objections.

6. The court erred in not setting aside and cancelling the quitclaim deed from Elizabeth Kirchoff and Julius Kirchoff to the Union Mutual Life Insurance Company mentioned in the bill.

7. The court erred in not allowing complainant to redeem lot two (2), mentioned in the bill, upon paying the amount at which it had been appraised.

8. The court erred in not allowing complainant to redeem the two lots in question upon paying the amount at which they had been appraised.

9. The court erred in not allowing complainant to redeem the two lots in question upon equitable terms.

10. The court erred in not decreeing that the title acquired by the defendant under the deed from complainant and her husband and under the foreclosure mentioned in the bill as to the two lots in question was held by it in trust for complainant.

11. The court erred in that his finding and decree are contrary to the evidence in the case.

By reason whereof plaintiff prayes that said decree may be reversed, etc.

W. S. HARBERT,
GEO. R. DALEY,
Solicitors for Plaintiff in Error.

594 In the Appellate Court, First District, Illinois.

ELIZABETH KIRCHOFF, Plaintiff in Error,
vs.
UNION MUTUAL LIFE INSURANCE COMPANY,
Defendant in Error.
No. 3359. Error to Cook Circuit.

I, John J. Healey, clerk of the appellate court within and for the first district of Illinois, hereby certify that the transcript of record hereto attached and marked A & B is the original transcript of record filed in said appellate court on the 3 day of May, A. D. 1889, by said Elizabeth Kirchoff.

[COURT SEAL.] In testimony whereof I have hereunto set my hand and seal of said court this 11th day of February, A. D. 1890.

JNO. J. HEALY,
Clerk of the Appellate Court, First District, Illinois.

595 At a term of the appellate court begun and held in Chicago on Tuesday, the first day of October, in the year of our Lord one thousand eight hundred and eighty-nine, within and for the first district of the State of Illinois.

Present: Hon. Joseph E. Gary, presiding justice;
" " Thomas A. Moran, justice;
" " Gwynn Garnett, justice; John J. Healy, clerk; C. R. Matson, sheriff.

ELIZABETH KIRCHOFF, Plaintiff in Error,
vs.
THE UNION MUTUAL LIFE INSURANCE COMPANY, Defendant in Error.
No. 3359. Error to Cook County Circuit Court.

Be it remembered that on the 2nd day of October, A. D. 1889, it being one of the days of said October term, A. D. 1889, certain proceedings were had in said coart and entered of record in words and figures following, to wit:

ELIZABETH KIRCHOFF
vs.
UNION MUTUAL — INSURANCE CO.
Error to Cook Circuit.

This case having this day been reached in the call of the docket and no one appearing to argue the same, *and* the court, not being fully advised in the premises, doth order that said cause be taken under advis-ment on briefs filed herein.

596 And afterwards, on the 28th day of October, A. D. 1889, the following order reversing the decree and remanding the same with directions was made and entered of record in said cause, to wit:

ELIZABETH KIRCHOFF, Plaintiff in Error,
vs.
UNION MUTUAL LIFE INSURANCE COMPANY of the State of Illinois, Defendant in Error
No. 3359.
Error to Cook Circuit.

On this day came again the said parties, and the court, having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error and being now sufficiently advised of and concerning the premises, are of the opinion that in the record and proceedings aforesaid and in the rendition of the judgment aforesaid there is manifest error. Therefore it is considered by the court that for that error and others in the record and proceedings aforesaid the judgment of the circuit court of Cook county in this behalf rendered be reversed, annulled, set aside, and wholly for nothing esteemed, and that this cause be remanded to the circuit court of Cook county, with directions to that court to enter an order and decree in conformity with the opinion filed herein.

And it is further considered by the court that the said Elizabeth Kirchoff, plaintiff in error, recover of and from the said Union Mutual Life Insurance Company, defendant in error, her costs by her in this behalf expended, to be taxed, and that she have execution therefor.

597 And afterwards, on the 11th day of December, A. D. 1889, the following order was made and entered of record in said cause, to wit:

ELIZABETH KIRCHOFF
vs.
UNION MUTUAL LIFE INSURANCE COMPANY. } 3359. Error to Cook Circuit.

The court, having considered the petition of defendants in error foe a rehearing in said cause and being now fully advised in the premises, doth order that the prayer of said petition be denied.

And afterwards, on the 18th day of December, A. D. 1889, the following order was made and entered of record in said cause, viz.:

ELIZABETH KIRCHOFF
vs.
UNION MUTUAL LIFE INSURANCE COMPANY. } 3359. Error to Cook Circuit.

This day came defendant in error, by its counsel, and moved the court for an appeal from the order and judgment of this court in said cause to the supreme court of the State of Illinois, and the court, being fully advised in the premises, doth order that an appeal be allowed herein to the Supreme Court on condition that said defendant in error doth within twenty days from this date execute and file in said cause a good and sufficient appeal bond in the penal sum of two hundred and fifty dollars, with surety thereto to be approved by the court.

598 And afterwards, on the 2nd day of January, A. D. 1890, the following order was made and entered of record in said cause, to wit:

ELIZABETH KIRCHOFF
vs.
UNION MUTUAL LIFE INSURANCE COMPANY. } 3359. Error to Cook Circuit.

This day came the defendant in error, by its counsel, and presented its certain appeal bond in said cause in the penal sum of two hundred and fifty dollars, with David G. Hamilton as surety thereto, and the court, being fully satisfied as to the qualifications of said surety, doth order that said appeal bond be, and the same is hereby, taken, approved, and ordered filed herein.

And afterwards, on the 2nd day of January, A. D. 1890, the following appeal bond was filed in said cause: which said bond is in the words and figures following, to wit:

Know all men by these presents that we, the Union Mutual Life Insurance Company of Maine, as principal, and David G. Hamilton, of the county of Cook and State of Illinois, as surety, are held and firmly bound unto Elizabeth Kirchoff, also of the same county and State, in the penal sum of two hundred and fifty dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents.

Witness our hands and seals this 23rd day of December, A. D. 1889.

The condition of the above obligation is such that whereas the said Union Mutual Life Insurance Company, on the 12th day 599 of July, 1887, in the circuit court of Cook county, in the State aforesaid, and of the June term thereof, A. D. 1887 (the bill of the complainant, Elizabeth Kirchoff, having been dismissed), did recover a judgment against the said Elizabeth Kirchoff for costs of suit, to which said order of dismissal and judgment of the circuit court of Cook county the said Elizabeth Kirchoff sued out a writ of error from the appellate court within and for the first district of said State; and whereas the said appellate court did, on the 28th day of October, A. D. 1889, and at the October term thereof, A. D. 1889, reverse and remand with directions the judgment of the circuit court aforesaid, and did afterwards, to wit, on the 11th day of December, 1889, make an order denying the petition of the said Union Mutual Life Insurance Company for a rehearing, and did render judgment against the above-bounden Union Mutual Life Insurance Company for costs of suit, from which order of reversal and remanding with directions and judgment of the said appellate court the said Union Mutual Life Insurance Company has prayed and obtained an appeal to the supreme court of the State of Illinois:

Now, therefore, if the said Union Mutual Life Insurance Company shall duly prosecute its said appeal with effect and, moreover, pay the amount of the judgment, costs, interest, and damages rendered and to be rendered against the said Union Mutual Life Insurance Company in case the said judgment shall be affirmed in said supreme court, then the above obligation to be void; otherwise to remain in full force and virtue.

[Seal of Corporation.]

UNION MUTUAL LIFE INSURANCE COMPANY,
By ARTHUR L. BATES, *Secretary.*
DAVID G. HAMILTON. [SEAL.]

600 I, John J. Healy, clerk of the appellate court in and for the first district of the State of Illinois, do hereby certify that the foregoing is a true copy of the final order and judgment, all orders, proceedings, and appeal bond of the said appellate court in the above-entitled cause of record in my office.

In testimony whereof I have set my hand and affixed the seal of the said appellate court, at Chicago, this 6th day of January, in the year of our Lord one thousand eight hundred and ninety. [SEAL.]

JOHN J. HEALY,
Clerk of the Appellate Court of the First Dist.

601 *Assignment of Errors.*

1. The appellate court erred in that its findings and judgment are contrary to the evidence.
2. The appellate court erred in that its findings and judgment are contrary to the law.

3. The appellate court erred in reversing and remanding the decree of the circuit court of Cook county.

4. The appellate court erred in not affirming the decree of the circuit court of Cook county.

5. The appellate court erred in holding that the appel*l*ee was entitled to redeem.

6. The appellate court erred in holding that appellee was entitled to redeem upon the payment of ten thousand dollars and interest thereon at six per cent instead of eight per cent., as stipulated in the mortgage debt.

7. The appellate court erred in holding that appellee was entitled to redee*d* on the payment of ten thousand dollars, the amount for which the lots were bid in at the sale.

8. The appellate court erred in admitting, as competent, evidence impeaching the recital of the quitclaim deed of appellee, to the effect that it was given in satisfaction of the indebtedness.

9. The appellate court erred in permitting Julius Kirchoff to testify in behalf of his wife, the appellee.

10. The appellate court erred in reversing the decree of the circuit court and remanding with special instructions, instead of remanding generally.

Wherefore appellant prays that said judgment of appellate court may be reversed.

GROSSCUP & WEAN,
Solicitors for Appellant.

P. S. GROSSCUP, *Of Counsel.*

602 Be it remembered, to wit, on the eleventh day of March, A. D. 1890, the same being one of the days of the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
ELIZABETH KIRCHOFF.
} Appeal from Appellate Court of Illinois, First District.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that appellant hath filed a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

603 Be it remembered, to wit, on the twelfth day of June, A. D. 1890, the same being in vacation after the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

UNION MUTUAL LIFE INSURANCE COMPANY } Appeal from Appellate
vs. } Court of Illinois,
ELIZABETH KIRCHOFF. } First District.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected, as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that in that record there is no error:

Therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error.

And it is further considered by the court that the said appellee recover of and from the said appellant her costs by her in this behalf expended, and that she have execution therefor.

And upon the entering of said order the opinion of the court rendered in said cause was filed in the office of the clerk in the words and figures following, viz:

604 No. 65.

Opinion by Craig, J.

This was a bill in equity brought by Elizabeth Kerchoff on the 12th day of June, 1882, against the Union Mutual Life Insurance Company to redeem lots 2 and 4, block 21, in canal trustees' subdivision of a certain quarter section of land in Cook county, to which the company acquired title under a quitclaim deed from complainant and her husband and under certain foreclosure proceedings in which she, her husband, and others were defendants.

The record is quite voluminous, but the facts, briefly stated, are substantially as follows: On the 8th day of May, 1871, Julius Kerchoff, complainant's husband, borrowed of the insurance company $60,000, and to secure the payment he and Elizabeth Kerchoff and her mother, Angela Diversey, executed their joint note; Kerchoff and wife executed a *decree* of trust on all real estate they owned, including the two lots, their homestead. Mrs. Diversey also executed a deed of trust on lands owned by her to secure the loan.

In 1877, default having been made in the payment of the money, negotiations were commenced with a view of a renewal of the loan on long time at a reduced rate of interest.

These negotiations did not prove successful, and an effort was then made for a settlement by having the mortgagors surrender all or most of the property in payment of the debt. In the meantime judgment was rendered against Mrs. Diversey on the note by confession, and in July, 1878, bills were instituted in the circuit court of the United States to foreclose the two trust deeds.

In the trust deed executed by Mrs. Diversey a part of the premises belonging to her were incorrectly described, and in the bill to foreclose the company sought to correct the error.

Mrs. Diversey put in an answer denying any mistake in
605 the description, and set up other matters of defense. On Jan.
1st, 1879, Kendall, the attorney of the insurance company in Chicago, wrote the company that in his opinion an offer to Mrs. Diversey to let her retain forty acres of the land would induce her to give the company a deed of the balance of the property; that Kerchoff would surrender all his property and make an arrangement to buy back his homestead at a liberal price, but "I do not dare to settle with him without settling the whole case," as Mrs. Diversey's matters may be complicated by any settlement with Kerchoff. To this the company replied: If settlement can be made of all complications in and with quitclaim from all parties, we will consent to let her keep 40 acres. A short time after this, about the 9th day of June, 1879, a settlement was made, and in Sept., 1879, Mrs. Diversey conveyed to the company all the land named in the trust deed which she owned, except the 40 acres, and that was released to her. At the same time complainant and her husband by quitclaim deed conveyed to the company all the land named in the trust deed they had executed to the company. Thus far there seems to be no substantial dispute between the parties, but in reference to what arrangement was made between the complainant and the insurance company under which she quitclaimed all the property described in the deed of trust to the company and allowed a subsequent decree of foreclosure to be entered the parties do not agree.

The complainant insists that during the preceding negotiations it was agreed, in consideration of her quitclaim deed, the appellant would reconvey to her two lots heretofore described, one of which was then occupied as her homestead, the other cornering upon it; that the price at which the reconveyance should take place was
their valuation at a previous appraisement by James H. Rees,
606 namely, seventy-five hundred and twenty-five hundred dollars
respectively, and that complainant was to execute in payment therefor her notes for ten thousand dollars, extending over a period of ten years, bearing interest at six per cent. and secured by a mortgage upon the two lots.

The ins. company, on the contrary, contends that no such agreement was ever concluded, and that if it was complainant is not, under all the facts, entitled either to redemption or a decree for specific performance.

During the time the negotiations were in progress which resulted in the settlement under consideration Edwin A. Warfield was the financial agent of the Union Mutual Life Insurance Company at Chicago, and Robert B. Kendall was the attorney of the company, in charge of its business. After the settlement had been concluded it turned out that certain encumbrances existed against some of the property which were subsequent to the trust deed, but which would take priority to the quitclaim deed executed by complainant and her husband. It therefore became necessary, in order to obtain a perfect title, to go on with the foreclosure proceedings, which was done. A decree was rendered, the property was sold, and upon the expiration of the time of redemption a master's deed was executed. In order to establish an agreement under which the complainant was entitled to redeem, reliance is placed mainly upon the evidence of three witnesses, Julius Kerchoff, Edwin Warfield, and Rob't B. Kendall. The first-named witness testified that he had authority from his wife to settle the matter for her and in all he did he acted as her agent; that the company filed a bill to foreclose the mortgage in July, 1878. He further testified:

About the time the bill was filed to foreclose the trust deed
607 I made a contract with the defendant looking toward a settlement. They wanted a quitclaim on the consideration of the two lots known as the homestead, and we gave a quitclaim deed in 1879, we agreeing to pay them for the homestead whatever the appraisal should be. The corner lot was appraised at $7,500, and the other at $2,500; total, $10,000; to be paid in ten years—$1,000 a year. They agreed to it, and we gave them a quitclaim deed. Some time after that they tried to foreclose. I asked Mr. Warfield what they meant. He said, It is exactly the same as we made the contract and is all right; it is better to have it foreclosed to keep the mortgage safe for us. I saw Mr. Kendall, the lawyer of the company. He said there were some judgments against that property, and to make it safer they had to foreclose, and that I need not be afraid; it would be all right. They told me they made out the deeds and sent them to their main office. When they came back during that year they were to be delivered to us on payment of $1,000. It took some time on account of the foreclosure. It was at six per cent. interest.

Mr. Warfield first saw me in relation to getting a quitclaim before the foreclosure proceedings were commenced. We were to relinquish everything except the homestead; give them a quitclaim and keep the homestead—the two lots. We were to give a quitclaim deed to everything, including the homestead lots, and redeem the homestead at the appraised value—$7,500 for one lot and $2,500 for the other. They were to make a deed out and send it to the company, and upon its return deliver it to us at any time during the year, and we were to pay $1,000 and $1,000 a year thereafter until $10,000 was paid, with six per cent. interest.

608 I agreed with the company's agent that Mr. Rees should make the appraisal. Warfield, Kendall, and myself went with him. He appraised the corner lot at $7,500 and the other at $2,500; total, $10,000. The terms of payment were ten years' time, $1,000 the first year, or upon the delivery of the deed whenever the deed was ready, and $1,000 each year thereafter until $10,000 had been paid, with six per cent. interest.

Warfield testified: There was an interview at which a proposition was made for the Kirchoffs to make and deliver a quitclaim deed to the company covering all the property embraced in the trust deed, the company to reconvey to the Kirchoffs their homestead. I believe the proposition embraced the lot cornering on the homestead; the conveyance to be made at an appraised value to be placed on the property by James H. Rees. The appraisement was made. The terms, as I now remember them, were $1,000 cash on delivery of the deed from the company, and $1,000 a year until the property was paid for, together with interest at 6 per cent. on deferred payments. Subsequently Mr. Kirchoff came with a carriage and took Mr. Rees, Mr. Kendall, and myself to look at the property for the purpose of making the valuation. As near as I can remember, the price fixed was $7,500 for the homestead and $2,500 for the Pine street lot, making $10,000.

The witness also testified that the proposition came from the president, vice-president, or chairman of the finance committee while some one of them was in Chicago. He, through Mr. De Witt, president of the company, made it. The witness also testified: "Personally, as agent of the company, I did not make the agreement heretofore testified to. What I did was to submit to the Kirchoffs propositions coming from the company.

609 Kendall testified that he commenced the foreclosure suit in July, 1878. There had been negotiations before that in regard to a settlement. Kirchoff then made some arrangement through Warfield, the financial agent of the company, to redeem his homestead. The witness further testified:

I understood it was agreed that Kerchoff could redeem or repurchase from the company, at a price to be fixed by appraisers to be selected by the Kirchoffs and the company. These negotiations were not conducted by me. I was only advised of them, as they were going on, by Mr. Warfield and by conversation with Kirchoff. James H. Rees was agreed upon as the appraiser, and Mr. Warfield, Mr. Kirchoff, and myself went with him one day and visited all the city property. My recollection is that the price he placed on the homestead lots was $7,000 for one and $2,500 for the other. Kirchoff said he would undertake to pay that if the company would make him a title to it and release him from further liability on his note and trust deed. There was a general understanding that he could buy the property back on those terms, the whole amount to be divided into ten equal yearly payments, at six or four per cent. interest—I don't remember which.

We have not set out all that the three witnesses testified to, as their evidence is quite voluminous. We have, however, given the main features of their evidence relating to the making of the agreement relied upon. If these witnesses are not mistaken, it is apparent that Kirchoff, as agent for the complainant, made a contract with Warfield, the financial agent of the Union Mutual Life Insurance Company, that he and his wife should convey to the company by quitclaim deed all of the property embraced in their deed
610 of trust, and that complainant was to redeem or receive a reconveyance of the two lots known as the homestead property, for which she was to pay the company the amount at which the

lots should be appraised by James H. Reese, payable $1,000 cash down and $1,000 annually, at six per cent. interest. The contract as detailed by Kirchoff is plain and definite; it contains nothing uncertain or ambiguous. He says it was made in 1878, soon after the filing of the bill. We have no doubt, when all the evidence is considered, that he is correct on this point—that is, the terms of the contract, as to the property embraced in the deed of trust he had executed, were then agreed upon and understood between him and Warfield; but the contract was not fully consummated until an agreement was reached with Mrs. Diversey as to the property embraced in the deed of trust she had executed. The object seems to have been to not close up any contract with Kerchoff until a contract was made with Mrs. Diversey. This seems apparent from the fact that Kerchoff and wife executed and delivered their deed to the company on the same day Mrs. Diversey delivered her deed. It may be that all of the evidence of Kerchoff is not entirely consistent and harmonious, but his evidence as to the terms and conditions of the contract is not only harmonious but is consistent with what was done looking in the direction of a consummation of the contract. The lands were appraised as agreed by the person named in the agreement. The complainant- executed and delivered their deed to the company as provided in the contract. The foreclosure proceedings were suffered to go on without any objection from the Kirchoffs, no defence being made by them The company accepted the deed of the Kirchoffs, under which they parted with all right of redemption in and to the lands described
611 therein, and it nowhere appears that any consideration existed for that conveyance except the agreement relied upon here to redeem the two lots upon payment of a stipulated sum. Why should the Kirchoffs part with their rights of redemption unless something was to be secured in return? But it is said Warfield's and Kendall's evidence, so far as it tends to establish a contract, is contradicted by their letters and acts after the alleged contract was claimed to have been made. Kendall, the attorney, took no part in making the contract, but, as he testified, understood from the financial agent of the company and from Kirchoff that an agreement had been made—he knew what it was. Warfield testified that personally as agent he did not make a contract; but he says he had propositions from the company which were submitted and accepted. He gives the terms of the contract substantially as given by Kirchoff. Now, if it be true that in the letters and correspondence of the financial agent and attorney with the company may be found statements not entirely in harmony with their evidence, such facts could not invalidate the contract after it was made as disclosed by the evidence of Warfield and Kerchoff. Such facts may somewhat weaken their evidence, but that is all.

As has been seen, Warfield was acting as financial agent of the company; he was entrusted with the management of the company's loans and securities and real estate in Chicago, and when acting within the scope of the apparent power the company will be bound by his acts. Union Mutual Life Ins. Co. *vs.* White, 106 Ill., 67.

But, aside from this, it is apparent from the letters of the company that Warfield had authority to make the contract relied upon. In Jan., 1879, Kendall wrote the company that he would have no difficulty in settling with Kerchoff, but that he dare not 612 settle with him without settling the whole case. In reply to this, Sharp, the vice-president, wrote Kendall to confer with Warfield in regard to a settlement, saying that the company would undoubtedly be satisfied with any plan which should have their united endorsement. While this was after the alleged agreement was made, it shows the authority with which the agent was clothed. But, independent of this, the company could not accept and hold the deed executed by the Kirchoffs under the agreement made with the agent and at the same time repudiate the agreement. The acceptance of the deed will be regarded as a ratification of the agreement made by the agent under which it was executed.

T. W. & W. R. R. Co. *vs.* Elliott, 76 Ill., 67.

Ewell Evans on Agency, 65.

613 But it is said no redemption can be allowed except of the whole premises and upon the payment of the whole debt in money. Where a tract of land has been sold for a specified amount of money in payment of a mortgage and the mortgagor makes application to redeem, in the absence of a contract between mortgagor and mortgagee to the contrary the mortgagor would be required to redeem the entire tract sold and pay the whole of the mortgage indebtedness. Jones on Mort., sec. 107–1072. But the doctrine has no application whatever to a case where the mortgagor and mortgagee have entered into an agreement under which a redemption may be made. The mortgagee may by contract extend the period allowed by law for redemption and a court of equity will enforce such an agreement. Schoonhaven *vs.* Pratt, 25 Ill., 457; Pensoneau *vs.* Pulliam, 47 Ill., 58. And we perceive no reason why the mortgagee may not accept money or land in satisfaction of a part of the mortgage debt and enter into a valid agreement to give the mortgagor an extension of time to pay a specified sum of money to redeem a part of the premises. No reason is perceived why an agreement to apportion the mortgage debt may not be made and enforced as made. Dexter *vs.* Arnold, 1 Sumn., 109; Howard *vs.* Gresham, 27 Ga., 347; Danforth *vs.* Smith, 23 Vt., 247; Mutual Mills Ins. Co. *vs.* Gordon, 121 Ill., 366.

The quitclaim deed from the Kirchoffs to the company dated Sept. 4th, 1879, contains the following clause:

"This conveyance is given and accepted in satisfaction of certain indebtedness of the said Julius Kirchoff and Elizabeth Kirchoff, secured by a trust deed on said premises given by the said Julius Kirchoff and Elizabeth Kirchoff, his wife, and Angela Diver- 614 sey to Levi D. Boone, trustee, dated the 8th day of May, in the year 1871."

And it is claimed that the complainant is estopped by this clause in the deed from setting up the agreement to redeem. The consideration named in a deed has never been regarded as conclusive

on the parties to the instrument; parol evidence is not admiss*a*ble to vary or contradict the terms of a deed or other written contract, yet such evidence may be introduced to show the true consideration of a deed, although it may be different from that named in the instrument. Booth *vs.* Haynes, 54 Ill., 363; Primm *vs.* Legg, 67 Ill., 500. The clause referred to is a mere recitation that the consideration for the deed was a certain thing which could not be conclusive, and if not conclusive, it could not work an estoppel. It is also denied that complainant's failure to assert the alleged agreement in the foreclosure proceedings is a bar to its assertion here that the proceedings in the foreclosure are conclusive. We are unable to concur in this position. It was a part of the arrangement under which the complainant was to obtain the two lots in controversy that a decree of foreclosure should be entered and that the premises should be sold under such decree. The decree was rendered and the sale made by consent for the purpose of clearing the different tracts of land mentioned in the quitclaim deed from certain incumbrances. The decree was not adverse to the interest of complainant, but in harmony with her interest; she is not attacking the decree, but claiming the enforcement of an agreement under which it was rendered, and in our judgment there is
no ground for holding that the rights of complainant*ant*
615 were cut off or in any manner impaired by the decree. As
has been said before, this record is quite voluminous and there is much that has not been referred to, as a reference to everything contained in the record would extend this opinion to an unusual length. We have said nothing in reference to the argument that this is a bill for specific performance, and hence falling within the statute of frauds, as we have not regarded it a bill of that character. The substance of the agreement was that complainant was to have the two lots in question, notwithstanding her deed of Sept., 1879, and notwithstanding the decree of foreclosure and sale thereunder, upon the payment of $1,000 and the execution of her notes secured by a mortgage on the premises for the balance, payable $1,000 each year for nine years, with six per cent. interest. The witnesses in speaking of the agreement—some of them speak of it as one to redeem, while others speak of it as one to repurchase. Kirchoff says it was to get the homestead back. Warfield said that the Kirchoffs were to be allowed to buy back their homestead. Kendall, in his evidence, says they were to be allowed to redeem or repurchase; but this is immaterial; the form of the transaction in a court of equity is not to be regarded. The Kirchoffs conveyed away their right of redemption to a number of tracts of land and in consideration they were to have the two lots free and clear from the deed of trust upon payment of a certain sum of money. The deed conveying the right of redemption was accepted by the company and it has been retained by it, and equity demands that it should comply with the contract under which the deed was received.

It is claimed in the argument the release of complainant and
616 her husband from personal liability on the indebtedness
formed the consideration for the quitclaim deed they executed

to the company. A letter written by Kendall Sept. 18th, 1877, to the company would seem to be a complete answer to this position. In that letter he informed the company that there was no personal liability existing against either; that Kirchoff had been through bankruptcy, and hence was not personally liable for the debt, and that Mrs. Kirchoff, having signed the note prior to the act of 1874 relating to contracts of married women, was under the disability of coverture and could not be held personally liable. From this statement it appears that the company knew long before the quitclaim deed was executed that the Kirchoffs were not personally liable for the debt and knowing that fact it is not at all likely that a supposed release from a liability that had no esistence formed a part of the consideration for the deed. We think the judgment of the appellate court was right and it will be affirmed.

Affirmed.

617 At a supreme court begun and held at Ottawa, on Tuesday, the seventh day of October, in the year of our Lord one thousand eight hundred and ninety, within and for the northern grand division of the State of Illinois.

Present: John Scholfield, chief justice; Alfred M. Craig, justice; Simeon P. Shope, justice; Benj. D. Magruder, justice; Joseph M. Bailey, justice; David J. Baker, justice; Jacob W. Wilkin, justice; George Hunt, attorney general; Lawrence Morrissey, sheriff; Alfred H. Taylor, clerk.

Be it remembered, to wit, on the thirteenth day of October, A. D. 1890, the same being one of the days of the term of court aforesaid, the following proceedings were, by said court, had and entered of record, to wit:

UNION MUTUAL LIFE INSURANCE COMPANY *vs.* ELIZABETH KIRCHOFF.	Appeal from *from* Appellate Court of Illinois, First District. Petition for Rehearing.

Now, on this day, this cause comes on to be heard upon the petition of the appellant for a rehearing herein, and, the court being now duly advised in the premises, it is considered by the court that said petition for a rehearing be overruled and denied; and it is further considered by the court that said petitioner pay the costs and charges herein taxed.

618 To the Hon. John M. Harlan, associate justice of the Supreme Court of the United States:

Your petitioner, The Union Mutual Life Insurance Company of Portland, Maine, a corporation duly organized and doing business under the laws of the State of Maine, respectfully represents that on the 12th day of June, A. D. 1890, the supreme court of the State of Illinois entered a decree and judgment in a cause wherein The Union Mutual Life Insurance Company, your petitioner, was appellant and Elizabeth Kirchoff was appellee; that the said supreme court of the State of Illinois is the highest court of the State of Illinois in which a decision in said suit can be had, and that the said decree and judgment so rendered was against your petitioner and was a final decree and judgment in said case.

Your petitioner further represents that by the record of said cause, pages 440–454, it is shown that your petitioner, on the 20th day of October, A. D. 1880, became the purchaser of two certain lots known as lots two and four, in block twenty-one (21), &c., at a judicial sale of the circuit court of the United States for the northern district of Illinois, conducted through one of the masters in chancery of said court, in a cause then pending for the foreclosure of a mortgage, wherein your petitioner was the complainant and the said Elizabeth Kirchoff and others were the defendants; that on the 24th day of February, A. D. 1881, said master's sale was by the said circuit court of the United States confirmed, and that on the 21st day of January, A. D. 1882, the time for redemption under the statutes of Illinois having expired, deeds were made by the said master 619 to your petitioner for the said lots, and that on the same day an order was entered in said cause in said circuit court of the United States approving said master's deeds, whereby your petitioner acquired a title and right through, under, and by virtue of the authority of the courts of the United States.

Your petitioner further represents that on the 12th day of June, A. D. 1882, the said Elizabeth Kirchoff, appellee in the said cause in the supreme court of the State of Illinois, filed in the circuit court of said State of Illinois, being one of the courts of said State, her bill in chancery, wherein she in substance claimed both that she had a contract for a reconveyance of said lots and that the said deeds for said premises issued to your petitioner under and by virtue of the authority of the United States circuit court aforesaid, and in the manner aforesaid were invalid and ineffective as conferring title upon your petitioner or foreclosing her title therein, for the pretended reason that long prior thereto, to wit, in August, A. D. 1878, she, as mortgagor, entered into an agreement with your petitioner, as mortgagee, by the terms of which the said foreclosure proceedings then pending were to be regarded as having no force and effect in cutting off her right of redemption to said lots or in conferring title upon your petitioner, but that said right of redemption, notwithstanding said judicial proceedings, was to continue and extend through the period of ten years instead of twelve months, and the amount of redemption was to be ten thousand dollars ($10,000.00) instead of seventeen thousand dollars ($17,000.00), the amount of said purchase, and praying in said bill for a decree of specific performance or a decree allowing her to redeem the said two lots 620 upon the payment of the said ten thousand dollars ($10,000.00) in the manner designated, one thousand dollars ($1,000.00) each year for ten years, notwithstanding the said judicial sale and the deeds issued thereunder by the United States circuit court aforesaid and notwithstanding the fact that the time for redemption had expired, and that the amount of redemption was upwards of seventeen thousand dollars ($17,000.00), all of which is shown by her bill (Record, pp. 3–12), her amended bill (Rec., pp. 28–37), and proposed amended bill (Rec., pp. 38–48).

Your petitioner further represents that on the 28th day of October, A. D. 1881, and prior to the issuance of deeds to your petitioner by the said master of the United States circuit court and the entry of an order in said court approving the same, James R. Page, a receiver previously appointed in said foreclosure suit, filed his petition in said circuit court of the United States for the northern district of Illinois in said foreclosure cause, asking for the possession of said premises from said Julius Kirchoff, husband of the said Elizabeth Kirchoff; that thereupon the said Elizabeth Kirchoff, through her said husband, Julius Kirchoff, as is admitted in the bill (Record, pp. 9, 10), resisted said application for a writ of assistance, setting forth in substance the above pretended agreement between your petitioner and said Elizabeth Kirchoff, and that upon the hearing of said application and answer, to wit, on the 16th day of November, A. D. 1881, the said court issued its writ of assistance to the marshal*l*, thereby overruling said answer and directing him to put the receiver in said foreclosure suit in possession of the said premises, the solicitors for your petitioner supporting said application of the receiver and disregarding the pretended agreement with the said Elizabeth Kirchoff, as is set forth in said bill (Record, pp. 9, 10).

621 Your petitioner further represents that upon the hearing in said circuit court and in the appeals thereon in the appellate court and the said supreme court of the State of Illinois your petitioner resisted the prayer of the said bill upon the following grounds:

First. That no such agreement as alleged in the bill aforesaid had been made.

Second. That the pretended agreement, so far as it might be made the groun*d* for specific performance or the establishment of a trust, was obnoxious to the statute of frauds.

Third. That the title acquired through the judicial authority of the courts of the United States could not thus be set aside, modified, or impaired.

Fourth. That the said State courts had no jurisdiction to thus set aside, modify, or impair a title acquired under judicial authority of the courts of the United States.

Fifth. That the claim set up in the bill was *res adjudicata*, in that it had been expressly passed upon on the hearing of the application for the writ of assistance and the resistance thereto by the said Elizabeth Kirchoff through her husband, Julius Kirchoff.

Your petitioner further represents that upon the said hearing in the circuit court of the State of Illinois said bill of Elizabeth Kirchoff was dismissed for want of equity; that thereupon she appealed said cause to the appellate court for the first district of Illinois, where the decree of the circuit court aforesaid was reversed and the said cause was ordered to be remanded to the said circuit court, with directions to enter an order or decree allowing the said
622 Elizabeth Kirchoff to redeem, as prayed in her bill, and to cause an accounting to be taken between your petitioner and the said Elizabeth Kirchoff as between mortgagor and mortgagee

of the said premises; all of which appears by the record of this cause and the authenticated copy of the opinion of said appellate court; that thereupon your petitioner appealed from the said decree and judgment of the appellate court to the supreme court of the State aforesaid, where the said decree and directions of the appellate court were affirmed, the said appellate court and supreme court expressly declining to consider the statute of frauds for the reason that they regarded the bill as one to redeem from the foreclosure sale and not one to enforce specifically a contract or trust.

Your petitioner further represents that under the practice of the said State of Illinois, as adjudicated by the courts thereof, the said circuit court of the State, to which said cause has been remanded, can do nothing further now in said cause than to enter a decree in conformity with the decree and opinion of the said appellate court, to wit, the decree permitting the said Elizabeth Kirchoff to redeem from the said deeds upon the payment of ten thousand dollars ($10,000.00), with interest thereon at the rate of six per cent. per annum, and as affected by an accounting between your petitioner and the said Elizabeth Kirchoff as between mortgagor and mortgagee of said premises.

Wherefore your petitioner represents that the said decree and judgment of the supreme court of the State of Illinois draws in question the validity of an authority exercised under the United States, and that the decision thereof has been against the validity of that authority, and that the said decree and judgment of the supreme court of the State of Illinois aforesaid decides against a title, right, and privilege of your petitioner claimed under the
623 authorities exercised under the United States, and that said judgment and decree draws in question the validity of an authority exercised under the State of Illinois on the ground of its being repugnant to the Constitution and laws of the United States, and the decision was in favor of the validity of such authority, and that the said judgment and decree fails to give full faith, credit, and effect to the judicial proceedings of the United States courts, in that it overrules and disregards the express acts of the said court aforesaid foreclosing the equity of redemption and the express adjudication of said court upon the claim made by the said Elizabeth Kirchoff, and that in the said decree and judgment there is error to the damage of your petitioner.

Wherefore your petitioner prays for the allowance of a writ of error and such other process as will enable your petitioner to obtain a review of the case and a correction of the errors alleged by the Supreme Court of the United States.

Respectfully submitted.

P. S. GROSSCUP,
FRANK L. WEAN,
Att'ys for Union Mutual Life Insurance Company.

Dated at Chicago, Illinois, this 3rd day of June, A. D. 1892.

Allowed, but not to operate as a supersedeas. Bond for costs in the penalty of $500 to be executed, with surety to be approved.

June 4th, 1892.

JOHN M. HARLAN,
Asso. Justice Sup. Ct. U. S.

(Endorsed:) Filed June 10, 1892. A. H. Taylor, clerk.

624 Know all men by these presents that we, Union Mutual Life Insurance Company, a corporation existing under and by virtue of the laws of the State of Maine, and John Wain, of Chicago, Ills., are held and firmly bound unto Elizabeth Kirchoff in the full and just sum of five hundred dollars, to be paid to the said Elizabeth Kirchoff, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this eighth day of June, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas lately, at a term of the supreme court of the State of Illinois for the northern grand division, in a suit depending in said court between Union Mutual Life Insurance Company, appellant, and Elizabeth Kirchoff, appellee, a judgment was rendered against the said Union Mutual Life Insurance Company, and the said Union Mutual Life Insurance Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Elizabeth Kirchoff, citing and admonishing her to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Union Mutual Life Insurance Company shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

UNION MUTUAL LIFE INSURANCE COMPANY, [SEAL.]
625 By JOHN E. DEWITT, *President.*
JOHN WAIN. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Approved by—
JOHN M. HARLAN,
Associate Justice Sup. Ct. U. S.

Mr. Wain is abundant security.

H. W. B.

(Endorsed:) Filed June 10, 1892. A. H. Taylor, clerk.

626 In the Supreme Court of the United States.

UNION MUTUAL LIFE INSURANCE CO., Pl'nt'fs in Error, *vs.* ELIZABETH KIRCHOFF, Def't in Error.	No. 1108. Error to the Supreme Court of the State of Illinois.

Assignment of Errors.

1. The supreme court of the State of Illinois erred in that its findings and judgment are contrary to the law.

2. The supreme court of the State of Illinois erred in that its findings and judgment are contrary to the evidence.

3. The supreme court of the State of Illinois erred in affirming the judgment of the appellate court and reversing the decree of the circuit court of Cook county, Illinois.

4. The supreme court of the State of Illinois erred in holding that the defendant in error was entitled to redeem.

5. The supreme court of the State of Illinois erred in holding that the defendant in error was entitled to redeem upon the payment of ten thousand dollars ($10,000.00) and interest thereon at six per cent. (6%) instead of eight per cent. (8%), as stipulated in the mortgage.

6. The supreme court of the State of Illinois erred in holding that the defendant in error was entitled to redeem on the payment of ten thousand dollars ($10,000.00) and interest instead of seventeen thousand dollars ($17,000.00), the amount for which the land was bid in at the sale, and interest. 627

7. The supreme court of the State of Illinois erred in affirming the decree of the appellate court of Illinois requiring plaintiff in error to make a conveyance of said premises to the defendant in error.

8. The supreme court of the State of Illinois erred in that its judgment and decree does not give full faith, credit, and effect to the decree, proceedings, and acts of the United States court, under which plaintiff in error acquired title to the premises.

9. The supreme court of the State of Illinois erred in holding that the circuit court of the said State of Illinois had jurisdiction to set aside, modify, and impair the title acquired by plaintiff in error under the judicial authority of the courts of the United States.

10. The supreme court of the State of Illinois erred in holding that the defendant in error was entitled to a decree for redemption in the State courts from the judicial sale made under the decrees and authority of the United States court.

11. The supreme court of the State of Illinois erred in that no agreement, such as it found, for redemption in fact was made.

12. The supreme court of the State of Illinois erred in holding that such an agreement had the effect of undoing the decrees, sales, and acts of the United States court to the extent of permitting a

redemption the same as if such decrees, sales, and acts were not in existence.

13. The supreme court of the State of Illinois erred in deciding against the title, right, and privilege claimed by the plain-
628 tiff in error under the authorities exercised under the United States.

14. The supreme court of the State of Illinois erred in holding that the order and judgment of the circuit court of the United States on the application of the plaintiff in error for a writ of assistance was not an adjudication of the questions involved in this suit.

P. S. GROSSCUP,
Attorney for Plaintiff in Error.

629 [Endorsed:] Case No. 15,078. Supreme Court U. S., October term, 1892. Term No., 1108. The Union Mutual Life Insurance Co., pl'ff in error, *vs.* Elizabeth Kirchoff. Assignment of errors. Filed Aug. 4, 1892.

Endorsed on cover: Case No. 15,078. Illinois Supreme Court. Term No., 418. The Union Mutual Life Insurance Company, plaintiff in error, *vs.* Elizabeth Kirchoff. Filed July 8, 1892.

Office Supreme Court U.S.
FILED.
DEC 5 1895
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 132.

UNION MUTUAL LIFE INSURANCE COMPANY,
PLAINTIFF IN ERROR,

vs.

ELIZABETH KIRCHOFF.

IN ERROR TO THE SUPREME COURT OF ILLINOIS.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

FRANK L. WEAN,
E. PARMALEE PRENTICE,
For Plaintiff in Error.

J. H. DRUMMOND,
Of Counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, 53 DEARBORN ST., CHICAGO.

SUPREME COURT OF THE UNITED STATES.

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CHICAGO
THE GUNTHORP-WARREN PRINTING CO.
1895.

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Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 132.

UNION MUTUAL LIFE INSURANCE COMPANY,
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vs.

ELIZABETH KIRCHOFF.

IN ERROR TO THE SUPREME COURT OF ILLINOIS.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

This case comes to this court by writ of error to the Supreme Court of Illinois. The writ was allowed by Mr. Justice HARLAN of this court, on consideration of the petition and transcript of the record presented by the plaintiff in error. (Rec., 306, 310.)

The litigation began with a bill in chancery filed by Elizabeth Kirchoff in the Circuit Court of Cook County, at Chicago, in which complainant sought a decree for the redemption of two tracts of land mortgaged by her to the Union Mutual Life Insurance Company; the bill expressly showing on its face that the title of the Insurance Company had some time before the filing of the bill, been converted from that of a mortgagee into that of an absolute owner, through judicial proceedings against the complainant in the United States Circuit Court for the Northern District of Illinois.

As originally framed in June, 1882, the bill avoided a prayer for redemption in express terms, but alleged that the foreclosure in the Federal court had been conducted in pursuance of a verbal agreement between the parties that when the title was complete, complainant would be allowed to redeem the property now in question. The prayer of the original bill was for specific performance of this alleged verbal agreement for redemption. (Rec., 8.)

In 1887 the prayer was made more direct, the complainant filing an amended bill in which the relief sought is stated to be a decree for redemption of property from the lien of a mortgage which had been foreclosed in the Federal court seven years before the amended bill was filed. (Rec., 18.) The ground upon which this relief was asked was however the same alleged verbal agreement stated in in the original bill.

On behalf of the Insurance Company it is emphatically denied that any such agreement was ever made. The only evidence of any agreement, produced by complainant, is the testimony of complainant's husband, who acted as her agent, and of two discharged employes of the Insurance Company. Into this question of fact, however, we do not propose to enter. If the decree of the United States Court was erroneous, the error can not be corrected afterwards by entering a different decree in the State court. If Mrs. Kirchoff neglected to make in the Federal court a defense which properly belonged to her, the consequences of that neglect can not be avoided by setting up in a State court by original bill, the defense which was concluded by the Federal decree.

The only questions which we desire to call to the attention of this court concern the jurisdiction of the State courts of Illinois over the subject-matter of complainant's bill, and the failure of those courts to give full effect to the decree of foreclosure entered by the United States Court.

We propose to show that the purpose of this suit in the State courts of Illinois is to redeem certain real estate from a mortgage which had previously been foreclosed in the United States Court, and that such redemption can only be allowed by a review of the foreclosure decree.

We propose to show also that the grounds upon which it is sought to establish this right of redemption are grounds which could, and if true, should have been interposed in the Federal court as a defense to the foreclosure proceedings, and if so interposed and properly supported by proof, they would have found their appropriate remedy in the decree of the Federal court.

The Insurance Company is the only defendant in this proceeding, and its defense is:

That the decree of the United States Court which ascertained the indebtedness of the complainant to the Insurance Company and barred her equity of redemption, is conclusive against the complainant, and in favor of the Insurance Company, and could not, even by that court, be reviewed or modified, upon alleged facts which the complainant could have there interposed to prevent its entry or modify its terms, and that it cannot be reviewed or modified by any other court of jurisdiction upon any grounds whatever.

In the discussion of the evidence relating to these propositions it will, we believe, appear to the court that the claim which it is thus sought to foist upon the Insurance Company is without merit upon the facts. Be this as it may, we do not propose to discuss the facts any further than is necessary to establish the defense that the State courts had no jurisdiction of this action and that the decree and proceedings of the Federal court are conclusive of the present suit, for whether the complainant can succeed in proving the alleged contract or not, the result is the same; that if there was such a contract the State court had no jurisdiction to enforce it. It could only be made available to complainant, if at all, after bill of review in the court which entered the foreclosure decree.

STATEMENT OF FACTS.

A brief yet comprehensive statement of the transactions out of which the questions presented in this case arise, may be made to commence on the 8th day of May, 1871, at which time the complainant and her husband, being the owners of certain lots in Chicago, and complainant's mother, Angela Diversey, the owner of certain other lots in Chicago and a farm in Cook County, joined in a note to the Insurance Company for $60,000, secured by a trust deed upon nearly all the property belonging to them. This note matured in three years, and bore interest at the rate of eight per cent.

The husband of the complainant, for whose benefit the loan was probably negotiated, was not prosperous in business, and failed to pay either the interest or principal coming due. He soon went into bankruptcy (Rec., 118), and, in 1876, the note, with accrued interest, amounted to upwards of $75,000, while the real estate securing it, stricken by the panic of 1873, was worth less than that amount. (Rec., 128.)

About this time Mrs. Diversey awakened to the danger of her situation upon Kirchoff's indebtedness. Having gotten herself into difficulties through the importunities of one son-in-law, she seems to have sought a way of getting out through the advice of another. (Rec., 53, 118.) In July or August, 1877, some kind of a proposition was made to extend the whole loan for ten years, reducing the interest from eight to five per cent,—five per cent. of the principal to be paid with each semi-annual payment of interest. (Rec., 257.) These negotiations, however, failed, chiefly through the advice of Mr. Weckler, Mrs. Diversey's other son-in-law, against her making herself liable a second time for Kirchoff. (Rec., 118.) About this time a judgment was entered up by the Insurance Company against Mrs. Diversey for $75,696.89 upon a note executed collaterally with the trust deed. (Rec., 118.)

No further steps of any definite character were taken by either of the parties to the mortgage until the 11th of July, 1878, at which time the Insurance Company filed its bill in the United States Court to foreclose its mortgage. (Rec., 185.) The bill, in addition, sought to correct a misdescription of property named in the mortgage, belonging to Mrs. Diversey. The defendant in error and her husband were defaulted on the 11th of November, but Mrs. Diversey, on the 20th of the same month, filed an answer, denying the right of the Insurance Company to correct the misdescription, and averring that the notes and mortgage were procured from her by misrepresentation. (Rec., 185.) From this date the relations of the parties seem to have remained unchanged until about the 9th of June, 1879. In the mean time, however, the Insurance Company was urging its attorney, Kendall, to use vigorous measures to push the case to a speedy termination. (Rec., 264, Ex. 137.)

There was during this interval more or less negotiation between Warfield and Kendall, the agent and attorney of the Insurance Company, and Mrs. Diversey and Kirchoff, respecting an adjustment of the loan. All the parties had discovered, by the last appraisement made, that the value of the property had sunk considerably below the amount of the loan. (Rec., 211.) Under those circumstances both Mrs. Diversey and the Kirchoffs were naturally desirous of making an arrangement by which they should all be released from an impending deficiency decree. Mrs. Diversey desired, of course, to save as much of her property as possible; and, therefore, probably as a make-weight in the negotiations, resisted the effort to correct the misdescription in the trust deed. The Kirchoffs, equally anxious to be released from a deficiency decree, were willing to repurchase the farm and the two lots, upon one of which their homestead stood, at a valuation of $25,000, to be evidenced by long paper, bearing interest at four per cent. (Rec., 119; Letter, November 25, 1878.) But neither this nor any other proposition of the Kirchoffs could be finally acted upon by the Insurance Company until a settlement with Mrs. Diversey should first be agreed upon; otherwise, as Kendall wrote to the home office on the 1st of January, 1879, "it might "prejudice our claim against Mrs. Diversey." (Rec., 120, 138.)

Finally, about the 9th of June, 1879, an agreement was reached by which the Insurance Company released to Mrs. Diversey its claim upon forty acres of land belonging to her, and she executed to it a warranty deed for the remainder of the premises. (Rec., 123.)

At the same time, a quitclaim deed, including all of the property belonging to Mrs. Kirchoff and her husband was prepared by them. None of these deeds were delivered, however, until the 11th of September, when Kendall, acting for the Insurance Company, received from Mrs. Diversey her deed and delivered to her the release deed of the company. About the same time he received from Mrs. Kirchoff and her husband the quitclaim deed of all the property belonging to them, and included in the mortgage. The deed from Mrs. Diversey was immediately placed on record. (Rec., 123.) But the deed from the Kirchoffs was withheld by Kendall. (Rec., 126, 143.)

It is at this point in the three-cornered negotiations between these parties that the questions of fact in despute between the plaintiff in error and defendant in error arise.

The defendant in error insists that, during the preceeding negotiations, it was agreed, in consideration of her quitclaim deed, that the Insurance Company would reconvey to her two lots included therein, one of which was then occupied as her homestead, the other cornering upon it, but facing the other way; that the price at which the reconveyance should take place was their valuation at a previous appraisement by James H. Rees, namely, $7,500 and $2,500 respectively; and that Mrs. Kirchoff was to execute, in payment therefor, her notes for $10,000, extending over a period of ten years, bearing interest at six per cent. and secured by a mortgage upon the two lots.

Upon the assumption that this agreement is proven, the defendant in error insists upon her so-called right of *redemption*, in accordance with its terms.

The Insurance Company, on the contrary, contends that a full inspection of the record will show that no such agreement was ever concluded; and that the State-courts are bound by the decree of the Federal court and have no jurisdiction to review it.

It will not be disputed that propositions similar to the so-called agreement were spoken off and discussed between Warfield and Kendall and the Kirchoffs, or that assurances were given by the former of the probable willingness of the Insurance Company to sell the lots on the terms named. But the record indisputably shows that when the Insurance Company was advised of the proposition by Mr. Kendall it was instantly and unequivocally declined, and this action of the Insurance Company communicated to Mrs. Kirchoff in apt time to prevent any injury to her from the quitclaim deed. After having been thus fully advised, she chose to deliver her deed, and, in that manner, get the benefit of the release from her indebtedness, *taking her chances of being able to make the rejected negotiations hold as an agreement.*

As stated above, Kendall caused the Diversey deed to be recorded the next day after its exeution, and on the 22d of October following, sent it to the company. (Rec., 123, 215.) The Kirchoff deed, however, was withheld from the records. Its execution was reported to the company, but no mention of any accompanying arrangement whereby the homestead lots, or either of them, was to be reconveyed to the defendant in error, was communicated or proposed to the company until the first of November following. (Rec., 123.) Warfield and Kendall both knew that they had no authority in the premises, except to communicate propositions to the company. (Rec., 84, 85, 113, 114, 168.) It is more than probable that this delay upon the part of the attorney and agent in Chicago was due to the fact that the exact terms of Kirchoff's proposition had not yet been definitely arranged. Warfield remembers such a misunderstanding. (Rec., 91.) Kendall recalls that "Kirchoff had alwas objected to paying cash down, "but wanted to pay at the end of six months." (Rec., 144, 151.) "I told him that I would submit that "proposition to the company, but that I had no idea they would accept it, because they never did—always required a payment down." (Rec., 144.)

Finally, about the 1st of November, 1879, without coming to any conclusion, either on the terms of payment or the price, Kirchoff consenting, however, that the proposition should cover one lot only, a deed covering the homestead lot was drafted, and the proposition *for the first time* communicated to the company. While no direct explanation of this delay in submitting the proposition is given, Mr. Kendall explains why the Kirchoff deed was withheld from record, and shows, too, that it was understood all around that no reconveyance could be definitely agreed upon until a proposition therefor was submitted to and approved by the home office of the Insurance Company. His testimony on this subject may be found upon pages 142 and 143 of the printed record, and is substantially as follows:

"When I received the deeds from Mrs. Kirchoff and Mrs. Diversey, I recorded the Diversey deed but held the Kirchoff deed in my office until I should hear from the company in regard to the conveyance to be made by Kirchoff; the Kirchoff deed having been made, as he explained to me, with the understanding on his part that he was to have a deed from the company of his homestead and the adjoining lot an Pine street, I did not feel like receiving it unconditionally. I told Kirchoff that while I had no doubt that the company would make a deed to him of the lot or lots on the terms proposed, I did not wish to do anything final in the matter without first having the formal authorization on the part of the company." (Rec., 142, 143.)

Also:

"I think I stated the matter somewhat in this way to Kirchoff at the time: That I would take his deed, would write to the company in regard to the conveyance back to him; in the meantime would not put his deed on record, nor take any advantage of him, intending to keep the matter open, so far as I can recollect now, until he had definitely settled the terms of his contract with the company, if he had any." (Rec., 152.)

Kirchoff nowhere denies what Kendall here testifies to. Nothing further was done at Chicago until the answer of the Insurance Company to this letter of November 1st had been received. That answer was written on the 5th of November, 1879 (Rec., 267; Ex., 144), and unequivocally declined the proposition submitted, or *any* proposition to sell to *Mr.* Kirchoff. It offered, at any time within the next thirty days, to sell the lot to Mrs. Kirchoff for $8,400, instead of $7,000; one-fourth in cash, and the balance in twenty equal semi-annual instalments.

Kirchoff and Kendall knew about when to expect an answer to this letter. It is not extraordinary that when the answer came Kirchoff was there, and was told its contents. Kendall says he was (Rec., 152, 153), and Kirchoff, while not expressly admitting this in terms, substantially admits the facts. (Rec., 34.) The proposition having been declined, Kendall either tendered back the quitclaim deed to Kirchoff, or gave him opportunity to withdraw it. (Rec., 152.) In this he was only carrying out his original purpose in withholding the deed from the record until the home office had been heard from.

But Kirchoff did not wish to withdraw the deed, and thus lose the benefit of its operation as a satisfaction of the indebtedness. Neither did he wish to accept the company's counter-proposition, for that involved, not simply a slightly increased price, but also, what was much more to him, the payment in cash of one-fourth of the purchase money. He therefore concluded to deliver the deed at any rate, and to rely upon what he called his contract, or his previous understanding with Warfield and Kendall, as being sufficiently binding to secure him a reconveyance, notwithstanding its rejection by the company. (Rec., 146). After this Kendall went on with the foreclosure proceedings. Kirchoff took a lease from the Receiver for the homestead property which he and Mrs. Kirchoff then occupied. In January, 1880, the bill was amended by adding new parties defendant. In July testimony was taken before the Master, and on the 30th of August a decree was entered confirming the report of the Master, and ordering a sale of the premises, except the portion theretofore conveyed to Mrs. Diversey. (Rec., 186.) The sale took place upon the 20th of October, 1880. The property was bid in, in parcels, by the company, for an aggregate amount of $92,000, that being about $1,000 less than the amount due. The two lots, of which a reconveyance at the aggregate price of $10,000 is sought in this suit, were bid in at $9,000 and $8,000, respectively. (Rec., 186.)

Meanwhile the Kirchoffs remained in possession of the homestead under their lease from the Receiver, appointed by the Federal court, and paying rent with about as much regularity as they had met their obligations to the company. No further proposition was ever made to the company for the redemption or repurchase of the homestead until the filing of the bill in this case.

During this interval two events occurred which are the real causes of this litigation. In the summer of 1880 Warfield was discharged from the Insurance Company's service, and in January, 1881, Kendall ceased to be its attorney. Shortly thereafter a revival in real estate values came. From that time on, the discharged agent has been untiring in fomenting litigation against his old employer. The record of nearly every case to which the company has been a party shows him to have been the chief witness for its adversary. In each instance he testifies to acts done by him as agent which his contemporaneous reports to, and correspondence with the home office flatly contradict.

When in October, 1881, the Receiver filed a petition for a writ of assistance to obtain possession of the premises, it met with an answer in which Kirchoff, acting, as is stated in complainant's bill as agent for defendant in error (Rec., 18), alleged that he was entitled to possession under and by virtue of an agreement entered into between him and the company as far back as 1878, whereby the company agreed to convey to him the two lots upon his executing his note to the company for $10,000, secured by a mortgage thereon. (Rec., 99.) The court, upon a hearing, overruled this answer, and issued its writ of assistance. (Rec., 186.)

On the 21st of January, 1882, deeds for these premises were made to the company, and on the 12th of June, following, the original bill in this case was filed.

Upon this statement of facts the first and conspicuous point which we desire to emphasize is the fact that the negotiations upon which the complainants rely were concluded by the refusal of the company on the 5th of November, 1879, to accept the proposition of the Kirchoffs. From this time on, then, the Kirchoffs knew that the foreclosure proceedings would continue, and would thenceforth at least be hostile to their interests. But the Kirchoffs made no answer to this foreclosure bill; they set up no defense in the foreclosure proceedings; and when the case was afterwards referred to the Master in Chancery, they presented no evidence, nor did they make any suggestion of a hostile claim, the case proceeding regularly to a decree. The property was sold, the Kirchoffs took a lease from the Receiver, and failing to pay rent, a writ of assistance was asked against them, and then, for the first time, the alleged agreement which was relied upon in this suit, saw the light. It was then urged that the Kirchoffs were not bound to pay rent for the reason that there was a contract between them and the Insurance Company by which they should buy the land which they then occupied for a certain sum. The agreement claimed, provided that rent paid to the Receiver should be applied upon the purchase price of the homestead (Rec., 98), but the lease contained no such provision (Rec., 90), the rent being applied by the Receiver upon the general indebtedness. Under these circumstances the Kirchoffs insisted that they were not bound to pay rent. The question was decided against them by the United States Court, a writ of assistance was issued, and they were ejected. Thereafter the time of redemption expired, Master's deeds were issued to the purchaser, and the title of the Insurance Company under decree of the Federal court became absolute and indefeasible upon any ground which had been settled by the judgment of that court.

THE RECORD.

The jurisdiction of this court over this writ of error, is established when we show:

First. That a Federal question is involved.

Second. That this Federal question is presented on the record of the case.

Third. That the Federal question was decided by the State court adversely to the title there claimed under Federal authority.

Fourth. That the Federal question is conclusive of the case.

The defense set up by the Insurance Company is based upon a title derived through judicial proceedings in the Federal court.

Roby v. *Colehour*, 146 U. S., 153.
Embry v. *Palmer*, 107 U. S., 3.
Dupasseur v. *Rochereau*, 21 Wall., 130.

The portions of the record presenting the Federal question are found in the allegations of complainant's bill, the defendant's answer thereto, and in the evidence upon this subject introduced by the Insurance Company.

The complainant's bill alleges that in 1871 Mrs. Kirchoff mortgaged several tracts of land to the Insurance Company; that in 1878, default having been made by the mortgagors in the payments called for by the mortgage, foreclosure proceedings were instituted by the Insurance Company.

The bill then alleges that thereupon it was agreed between the parties that the mortgagor should convey all the mortgaged property to the Insurance Company, that the Insurance Company would receive this conveyance in full satisfaction of its debt, and that Mrs. Kirchoff should then have the right to "redeem from the trust deed" two tracts of land known as lots 2 and 4.

The bill then proceeds as follows:

"That afterwards, pursuant to the agreement aforesaid, your oratrix and her husband executed, acknowledged and delivered to said company a deed of release and quitclaim of all and singular the land and premises belonging to your oratrix, described in said trust deed, including the said lots hereinbefore specifically described, which said deed, as your oratrix is informed and believes, has since been recorded in the recorder's office of said county, and to said deed or the record thereof your oratrix prays leave to refer, if it be necessary so to do.

That thereafter, upon examination of the title to said lots, it appeared that there were certain intervening liens and incumbrances upon the same, created after the execution of said trust deed and prior to the agreement hereinbefore set forth for such redemption by your oratrix, and it was thereupon represented to your oratrix by said company through its attorney, that it would be necessary to foreclose said trust deed in order to make good title in said company to said lots of land before it could take mortgage thereof for said installments of redemption money, and it was thereupon agreed by and between the said company and your oratrix that the agreement for said redemption should not be further performed until after the title had been perfected in said company by said foreclosure proceedings, but the further execution thereof should be held in abeyance until after such foreclosure proceedings should be completed and the title to said lots become perfected in said company, discharged of such incumbrances, etc., and that in the meantime your oratrix should interpose no defense to such foreclosure proceedings.

And your oratrix further shows unto your Honors that the said company, in pursuance of said agreement, afterwards continued the prosecution of its suit in the Circuit Court of the United States for the Northern District of Illinois, for the foreclosure of said trust deed, and obtained a decree of foreclosure and sale, under and by virtue of which said decree said lots were afterwards, to-wit: on the 20th day of October, A. D. 1880, offered for sale by the master in chancery of said court, and were sold and struck off to said company at said sale as follows, to-wit: said lot two (2) for the sum of nine thousand dollars ($9,000), and said lot four (4) for the sum of eight thousand dollars ($8,000), and that deeds of said lots have since been issued and delivered to said company by the said Master in Chancery, and have been recorded in said recorder's office.

That in said suit for foreclosure the said company procured the appointment of a Receiver of all the land and premises involved in said suit, your oratrix making no defense to said suit, and that on, to-wit: the 16th day of November, 1881, said Receiver demanded possession of said lot two (2), which was occupied by your oratrix and her husband as a homestead, and applied to said court for a writ of assistance to put him, said Receiver, in possession thereof.

That thereupon your oratrix, through her said husband, resisted said application for said writ of assistance, and set up as defense to the application of said Receiver an answer setting forth in substance the aforesaid agreement between said company and your oratrix, but said company, through its solicitors employed in said suit, supported the application of said Receiver, and wholly disregarded its agreement with your oratrix, and procured order of said court for the assistance of said writ, whereby your oratrix and her husband were compelled to vacate their homestead.

And your oratrix well hoped that upon the execution and delivery of said Master's deeds of said lots to said company (which said deeds were issued on or about the 21st day of January, A. D. 1882), the said company would in good faith keep and perform its said agreement with your oratrix, and convey said two lots to your oratrix upon the terms aforesaid.

But now so it is the said Union Mutual Life Insurance Company utterly refuses to carry out its said agreement with your oratrix, and falsely and fraudulently claims to hold and own said two lots of land in fee simple absolute, free and discharged of any equitable interest therein on the part of your oratrix, and seeks to deprive your oratrix of her rights in the premises, and refuses to convey to your oratrix the said lots of land, or either of them, upon the terms agreed upon as aforesaid, and gives out and pretends that no such agreement was ever made or entered into between said company and your oratrix.

Whereas, your oratrix charges the contrary to be the the truth, and that she is justly entitled to redemption of said lots, and a conveyance from said company upon the terms aforesaid.

And your oratrix further shows unto your Honors that she has in good faith kept and performed her part of said agreement for the redemption of said lots, so far as she has been able to do, by the delivering of her said deed of release and quitclaim to said company, and has refrained from interposing any defense to said foreclosure proceedings, in full faith and reliance that the said agreement would be kept and performed by said company, and that she has always been and is now ready and willing to keep and perform the whole of said agreement on her part to be performed.

All which actings, doings and pretenses of said company is contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your oratrix in the premises.

In further consideration whereof, and forasmuch as your oratrix is remediless in the premises at and by the strict rules of the common law, and is relievable only in a court of equity where such things are perfectly cognizable and relievable, to the end, therefore, that said Union Mutual Life Insurance Company may true answer make to all and singular the premises (but not under oath, the benefit whereof is expressly waived by your oratrix); That your oratrix may be allowed to redeem said premises according to the terms of said agreement: that said defendant may be compelled by the decree of this court to perform the said agreement with your oratrix, and convey to her the said two lots of land hereinbefore specifically described, according to the terms thereof, as before stated, and account to your oratrix for the rents and profits of said premises since the date of said agreement, your oratrix being ready and willing and duly offering to perform the said agreement in all things on her part, and that your oratrix may have such other and farther relief in the premises as the equities of her case may require and to your Honors shall seem meet."

The defendant demurred in this bill; the demurrer was overruled; the defendant then answered admitting the foreclosure proceedings in the United States Court and its claim of title thereunder, reserving a demurrer in its answer, and upon hearing introduced in evidence the record of the foreclosure proceedings in the Federal court. When it came to making up the record for appeal it was considered unnecessary by Mrs. Kirchoff's solicitors, who prepared the record, to incorporate therein a copy of all the papers filed in the foreclosure suit, and in their place was inserted a stipulation as follows:

"It is hereby stipulated that, for the purpose of rendering the record less voluminous, said papers may be omitted by the clerk in making up the record, and that the following stipulated statement of facts may be inserted in said record in lieu of said files, namely:

First. That the defendant company filed a bill in the United States Circuit Court for the Northern District of Illinois, upon the 11th day of July, 1878, for the purpose of foreclosing the deed of trust from Julius Kirchoff, Elizabeth Kirchoff and Angela Diversey to Levi D. Boone, dated May 8, 1871, which said deed of trust was given to secure the joint judgment note of said last three named grantors. Said bill sought to foreclose said trust deed as to all of the property therein mentioned (except that which had been previously released), including the property involved in this suit, namely: lots two (2) and four (4), in block twenty-one (21), in the Canal Trustee's subdivision of the south fractional quarter of section three (3), township thirty-nine (39) north, range fourteen (14) east of the third principal meridian; that the bill also sought to correct an error in the description of the property in the trust deed belonging to Mrs. Diversy.

Second. August 9, 1878, an alias chancery subpœna, returnable the first Monday in September, 1878, was issued to all the defendants and service had upon the 10th day of August, as appears by the return of the marshal. It appears by said return that Elizabeth Kirchoff was served by leaving a copy of the subpœna with her husband.

Third. That on the 20th day of November, 1878, Angela Diversey, one of the defendants in said last named suit, filed her answer in said cause, in which she averred that the loan secured by said trust deed was not made to her, but that she became a party to the notes and trust deed solely as a surety for Julius Kirchoff, and she denies that there was any mistake in the description of the premises in the trust deed. She further averred that she was induced to execute said trust deed through the false representations of Julius Kirchoff, that it was to secure $5,000 only, and that the company was aware of the said misrepresentation and of the fact that she was thereby led to execute the trust deed, and denies that the defendant company have a right to recover from her any greater sum.

Fourth. That on the 11th day of November, 1878, there was entered an order in said cause reciting that said Julius Kirchoff, Elizabeth Kirchoff and other defendants being severally called to appear and make answer to the bill, and that none of them appearing, default was taken against them and the bill taken as confessed.

Fifth. That on the 16th day of November, 1878, there was entered in said cause an order appointing Edwin A. Warfield Receiver of certain of the property described in the trust deed, including the premises in question.

Sixth. That on or about the 6th day of September, 1880, the said Edwin A. Warfield, Receiver, filed a written report in said cause, by which it appears that the said Julius Kirchoff paid him rent for the use and occupation of said premises.

It is further stipulated that thereafter the said Edwin A. Warfield, Receiver, resigned, and that James R. Page was appointed Receiver in said cause.

Seventh. That on the 28th day of October, 1881, the said James R. Page, Receiver, filed a petition representing that he had been appointed Receiver in said cause; that Julius Kirchoff was in possession of said lots two (2) and four (4) of block twenty-one (21) aforesaid, and that he refused to surrender possession of the same to said Receiver or to pay rent therefor. Said receiver prayed for a writ of assistance to eject said Julius Kirchoff from said premises.

Eighth. That on the 28th day of October, 1881, the court entered an order upon said Julius Kirchoff to show cause within four days why he should not surrender possession of said premises to said Receiver.

Ninth. That on the 16th day of November, 1881, said Julius Kirchoff filed an answer to said rule; which answer is set out in the record immediately following the testimony of E. A. Warfield.

Tenth. That on the 16th day of November, 1881, the said court issued a writ of assistance, directing the marshal to put said James R. Page, Receiver, into possession of said premises.

Eleventh. That on the 17th day of January, 1880, the bill in said cause was amended, making Eben F. Runyan, of the State of Nebraska; Robert E. Jenkins, assignee in bankruptcy of said Runyan, and George W. Stanford parties defendant, and that on the 15th day of March, 1880, an order of default was taken against said last named defendant, and the case referred to Henry W. Bishop, Master in Chancery, to take proof.

Twelfth. That said Master in Chancery took testimony in said cause, and that on the 2d day of July, 1880, he filed his report, in which he found that the allegations of the bill were true and recommended a foreclosure of said deed of trust.

Thirteenth. That on the 30th day of August, 1880, there was entered in said cause a decree confirming said Master's report and ordering said Master to make sale of the entire premises covered by said trust deed, except such parcels as had been therefore released to Mrs. Diversey and others.

Fourteenth. That on the 29th day of October, 1880, the said Master filed in said cause his report, that in pursuance of said decree he did on the 20th day of October, 1880, make a sale of said premises as described in said decree; that the highest bid at said sale was by the complainant for the sum of $92,000, and that there remained unsatisfied under said decree the sum of $1,027.24; that said property was offered and struck off in separate parcels, the whole aggregating $92,000, and that said lot two (2) above described, was bid in for $9,000, and said lot four (4) for the sum of $8,000.

Fifteenth. That on the 24th day of February, 1881, there was entered in said cause an order confirming said Master's sale.

Sixteenth. That on the 21st day of January, 1882, the time for redemption having expired, the said Master made deeds to said complainant of the various tracts of land embraced in said deed of trust, including the premises in question.

Seventeenth. That on the 21st day of January, 1882, there was entered in said cause an order approving said Master's deeds."

The answer filed by Mr. Kirchoff as agent for defendant in error (complainant's bill, Rec., 18), to the receiver's petition for a writ of assistance is shown in the record, pages 99-101, and is as follows:

"The undersigned, in response to the order heretofore entered herein, upon the petition of James R. Page, requiring him to show cause why a writ of assistance should not issue in said cause directing the marshal to put the Receiver in the above entitled cause in possession of the property in the bill described, says that the issuance of such a writ would be inequitable and unjust and calculated to prejudice the rights of the defendant Julius Kirchoff.

The undersigned begs leave to submit herewith the following statement of facts as grounds for resisting the application for said order.

Previous to the institution of any foreclosure proceedings in this case an agreement was entered into between the complainant and said defendant, whereby, for the consideration hereinafter named, said defendant was to quitclaim to said complainant his interest in certain of the property described in the bill of complaint, including lots 2 and 4, in block 21, Canal Trustees' subdivision in west half of the south east quarter of section 3, township 39, range 14 east, said last described property being the homestead of said Kirchoff, and a lot near the same, in the vicinity of Rush and Pearson streets, and was to consent to a foreclosure on all of the property described in said bill. On behalf of the complainant it was agreed and distinctly understood with reference to the two pieces of property last described, that the same should be bid off at a sale to be made under the decree to be entered, at such sum as the complainant should see fit, and that after the same had been made, said Kirchoff should be entitled to a reconveyance of the two lots last above described upon payment to complainant of $10,000—that is to say, said complainant was to convey said two parcels of property to defendant Kirchoff, or to such persons as he should nominate, for a consideration of $10,000, in ten payments of $1,000 each, one thousand to be paid upon the tender by complainant to said Kirchoff of a deed of said property within one year from the date of the Master's deed to complainant under said decree, and the residue of the unpaid consideration of $10,000 was to be secured by a lien on the lots, and made payable in nine equal payments of $1,000 each, as aforesaid, and this respondent executed a quitclaim deed to said complainant in pursuance of said agreement.

The undersigned now avers that complainant regardless of its duties and obligations in the premises, and contrary to justice and equity, claims to own said property absolutely, and refuses to convey the same to the undersigned in pursuance of said agreement.

The undersigned further states that according to the terms of said agreement no deficiency decree was to be entered, or if entered, the same was to be canceled without payment; that the undersigned is not indebted to said complainant in any sum whatever; that he has been willing and still is willing to faithfully fulfill his undertaking in the premises; that said property is worth a sum greatly in excess of $10,000, and that at the time of the foreclosure the property covered by the liens described in the bill was worth much more than all sums of money due from the undersigned to said complainant, and that he would not have executed said deed but for the agreement so made by said complainant to transfer to him the title to the said lots 2 and 4 upon the terms named.

Said Kirchoff further states that his solicitors have in course of preparation a bill in chancery, setting up the foregoing facts and *asking that complainant be required to execute its undertakings* in the premises, or in default thereof, *that the decree herein be set aside and held for naught.*

The undersigned further states that he has frequently offered to perform and has at all times been ready and willing to perform said contract upon his part by the payment of $1,000 and the proper securing of the balance of said sum of $10,000 upon the execution and delivery to him by said complainant of a deed of said property, and he now here avers his readiness to perform said contract upon his part according to the terms of said agreement.

Inasmuch, therefore, as the complainant cannot be prejudiced by delay, your objector asks that no order of restitution be issued herein for a reasonable time at least.''

The record, therefore, presents the question as to the claim of title made by the Insurance Company under the Federal decree and other proceedings of the Federal court, and as to the jurisdiction of the State court to review the decree of the United States Court. The question of the Insurance Company's claim of title under Federal authority was clearly presented by the allegations of the bill, and answer, and by introducing in evidence the record of the foreclosure proceedings in the United States Court. It also appears from the record that the question of jurisdiction was presented to and passed upon by all the State courts of Illinois, from the trial court to the Supreme Court. The question was first presented by a demurrer to complainant's bill; it was afterwards presented by the reservation of a demurrer in the answer, and upon this record was actually heard in the State courts, and was passed upon in the opinion of the Supreme Court of the state. (Rec., 305.)

This is shown in the first place, by the fact that in order to render any decision in the case it was necessary for the State courts to determine whether or not they possessed any jurisdiction over the subject-matter of this controversy. The fact that a decree was entered in the State courts was of itself an adjudication that those courts had jurisdiction to enter a decree. Furthermore, the opinion of the Supreme Court of Illinois, while dealing very briefly with the question, as, perhaps, was necessary in view of the authorities and the evidence, will, nevertheless, be found to have directly passed upon the subject. (Rec., 305.)

Judge CRAIG, in delivering the opinion of the Supreme Court, in deciding this question, says:

> "It is also claimed that complainant's failure to assert the alleged agreement in the foreclosure proceedings is a bar to its assertion here, and that the proceedings in the foreclosure are conclusive. We are unable to concur in this position. It was a part of the arrangement under which the complainant was to obtain the two lots in controversy that a decree of foreclosure should be entered and that the premises should be sold under such a decree. The decree was rendered and the sale made by consent for the purpose of clearing the different tracts of land mentioned in the quitclaim deed from certain incumbrances. The decree was not adverse to the interest of complainant, but in harmony with her interest; she is not attacking the decree, but claiming the enforcement of an agreement under which it was rendered, and in our judgment there is no ground for holding that the rights of complainant were cut off or in any manner impaired by the decree."

It therefore clearly appears from the foregoing:

First. That the bill in this case alleged that defendant claimed to hold an absolute title to the lots in question, by virtue of the Master's deeds obtained through the foreclosure proceedings in the United States Court. (A title claimed under an authority exercised under the United States.)

Second. That the defendant answered reserving therein the advantage of a demurrer and a plea, and admitting the claim of absolute title under the Federal decree and deeds.

Third. That the defendant introduced in evidence the record and decree of the Federal court in support of the title which is thereby claimed.

Fourth. That a Federal question was thereby raised on the record in the State court by the pleadings and proof.

Fifth. That any decision of the case necessarily involved passing on this claim of title, and the decision of this question.

Sixth. That the opinion of the Supreme Court of Illinois shows that the question was actually passed upon by that court.

Seventh. That the necessary effect of the decree and judgment of the State court was against the right and title claimed by the defendant under Federal authority.

The present writ of error is thus brought, not only within the letter, but also within the spirit of section 709 of the Revised Statutes, as that section has been construed and applied in numerous cases by this court.

Among the more recent cases in which this court has taken jurisdiction, under circumstances similar to those in the case at bar, may be cited the case of *Roby* v. *Cole-*

hour, 146 U. S., 153, and *Dowell* v. *Applegate*, 152 U. S., 327. In the former case the grounds for the jurisdiction of this court were much less apparent than in the case at bar. In that case it did not appear either from the opinion of the court of original jurisdiction or the opinion of the Supreme Court of Illinois, that either court passed upon any question of a Federal nature, the facts with reference to the questions decided by the state court appearing in the record in the shape of a certificate of the chief justice of the State Supreme Court. In the course of the opinion of this court in the Roby case, Mr. Justice HARLAN, speaking for the court, said:

"But although it does not appear from the opinion of the court of original jurisdiction or the opinion of the Supreme Court of Illinois, that either formally passed upon any question of a Federal nature, the necessary effect of the decree was to determine, adversely to Roby, the rights and immunities claimed by him, in the pleadings and proof under the proceedings in bankruptcy to which reference has been made. * * * Our jurisdiction being invoked upon the ground that a right or immunity specially set up and claimed under the Constitution or authority of the United States, has been denied by the judgment sought to be reviewed, it must appear from the record of the case either that the right, so set up and claimed, was expressly denied, or that such was the necessary effect in law of the judgment. The present case may be held to come within this rule. In view of the certificate by the Chief Justice of the state court the office of which, as said in *Parmelee* v. *Lawrence*, (11 Wall., 36), was, as respects the Federal question, 'to make more certain and specific what is too general and indefinite in the record,' we are not disposed to construe the pleadings so strictly as to hold that they did not sufficiently set up and claim the Federal rights which that certificate state were claimed by Roby, but were withheld, and were intended to be withheld from him by the court below."

In the case of *Dowell* v. *Applegate* above cited, this court said:

"From this history of the litigation between the parties, it appears that Dowell, in his answer to this suit, asserted his right to the forty acres in dispute, under and by virtue of the decree in the proceedings in the Circuit Court of the United States. That right having been denied by the judgment of the Supreme Court of Oregon affirming the judgment of the Circuit Court of Douglas County, *it is necessary to inquire*—

"First, whether the decree and proceedings in the Federal court were, as claimed, void for want of jurisdiction to hear and determine the suit which was instituted by Dowell in the Circuit Court of Douglas County, Oregon, and was subsequently removed into the Circuit Court of the United States for the District of Oregon;

"Secondly, whether if such decree and proceedings were not void, the state court gave due effect to them when adjudging that Dowell took nothing by his purchase of the lands in dispute, under that decree.

If these questions be determined in favor of Dowell, then the judgment below was erroneous in that it denied a right specially set up and claimed by him under authority of the United States."

In the case of *Dupasseur* v. *Rochereau*, 21 Wall., 130, this court said:

"Where a state court refuses to give effect to the judgment of a court of the United States, rendered upon the point in dispute and with jurisdiction of the case and of the parties, a question is undoubtedly raised which, under the act of 1867, may be brought to this court for revision. The case would be one in which a title or right is claimed under an authority exercised under the United States, and the decision is against the title or right so set up. It would thus be a case arising under the laws of the United Statds, establishing a Circuit Court and vesting it with jurisdiction; and hence it would be within the judicial power of the United States, as defined by the constitution; and it is clearly within the chart of appellate power given to this court over cases arising in and decided by the state courts."

The jurisdiction of this court over the present case is also sustained by the following authorities and many others:

Crescent City Co. v. *Butchers' Union Co.*, 120 U. S., 141.

Embry v. *Palmer*, 107 U. S., 3.

Factors' Insurance Co. v. *Murphy*, 111 U. S., 738.

Crapo v. *Kelly*, 16 Wall., 610.

Green v. *Van Buskirk*, 5 Wall., 307.

Crowell v. *Randall*, 10 Peters, 368.

Murray v. *Charleston*, 6 Otto, 432.

Murdock v. *City of Memphis*, 20 Wall., 590.

ASSIGNMENT OF ERRORS.

1. The Supreme Court of the State of Illinois erred in that its findings and judgment are contrary to the law.

2. The Supreme Court of the State of Illinois erred in that its findings and judgment are contrary to the evidence.

3. The Supreme Court of the State of Illinois erred in affirming the judgment of the Appellate Court and reversing the decree of the Circuit Court of Cook County, Illinois.

4. The Supreme Court of the State of Illinois erred in holding that the defendant in error was entitled to redeem.

5. The Supreme Court of the State of Illinois erred in holding that the defendant in error was entitled to redeem upon the payment of ten thousand dollars ($10,000) and interest thereon at six per cent. (6%), instead of eight per cent. (8%), as stipulated in the mortgage.

6. The Supreme Court of the State of Illinois erred in holding that the defendant in error was entitled to redeem on the payment of ten thousand dollars ($10,000) and interest, instead of seventeen thousand dollars ($17,000), the amount for which the land was bid in at the sale, and interest.

7. The Supreme Court of the State of Illinois erred in affirming the decree of the Appellate Court of Illinois requiring plaintiff in error to make a conveyance of said premises to the defendant in error.

8. The Supreme Court of the State of Illinois erred in that its judgment and decree does not give full faith, credit and effect to the

decree, proceedings and acts of the United States Court, under which plaintiff in error acquired title to the premises.

9. The Supreme Court of the State of Illinois erred in holding that the Circuit Court of the State of Illinois had jurisdiction to set aside, modify and impair the title acquired by plaintiff in error under the judicial authority of the courts of the United States.

10. The Supreme Court of the State of Illinois erred in holding that the defendant in error was entitled to a decree for redemption in the State courts from the judicial sale made under the decrees and authority of the United States Court.

11. The Supreme Court of the State of Illinois erred in that no agreement, such as it found, for redemption, in fact was made.

12. The Supreme Court of the State of Illinois erred in holding that such an agreement had the effect of undoing the decrees, sales and acts of the United States Court to the extent of permitting a redemption the same as if such decrees, sales and acts were not in existence.

13. The Supreme Court of the State of Illinois erred in deciding against the title, right and privilege claimed by the plaintiff in error under the authorities exercised under the United States.

14. The Supreme Court of the State of Illinois erred in holding that the order and judgment of the Circuit Court of the United States on the application of the plaintiff in error for a writ of assistance was not an adjudication of the questions involved in this suit.

BRIEF.

I.

THE BILL IS A BILL TO REDEEM FROM A MORTGAGE WHICH HAD BEEN PREVIOUSLY FORECLOSED BY THE FEDERAL COURT. SUCH A BILL IS NECESSARILY A BILL TO REVIEW THE FORECLOSURE DECREE.

Record, pp. 16, 19, 299, 304, 305.
Kirchoff v. *Union Mutual Life Ins. Co.*, 33 Ill. App., 607.
Kirchoff v. *Union Mutual Life Ins. Co.*, 128 Ill., 199.
Union Mutual v. *Kirchoff*, 133 Ill., 368.
Nougue v. *Clapp*, 101 U. S., 551.
Rae v. *Hulbert*, 17 Ill., 572.
Windett v. *Conn. Mut. Life Ins. Co.*, 130 Ill., 621.
Maloney v. *Dewey*, 127 Ill., 305.
Am. & Eng. Ency. Law, Vol. 20, p. 626.

II.

THE BILL ATTACKS THE FEDERAL DECREE ON GROUNDS WHICH, IF TRUE, WOULD AVOID THAT DECREE AS AGAINST ALL PERSONS, AND IN ITS PRAYER TREATS THE DECREE AS A NULLITY AND SEEKS TO RECONSIDER ITS SUBJECT-MATTER. THIS IS A BILL OF REVIEW.

Connolly v. *Cunningham*, 5 Pac. Rep., 473.
Kerr on Fraud & Mistake (Am. Ed.), p. 294.
Frisby v. *Withers*, 61 Texas, 134.
Randall v. *Howard*, 2 Black, 585.

Thompson v. *Tolmie*, 2 Peters, 157.
Nougue v. *Clapp*, 101 U. S., 551.
Howland v. *Blake*, 7 Biss., 40.
Howland v. *Blake*, 97 U. S., 624.
Leadville Coal Co. v. *McCreery*, 141 U. S., 475.

III.

IT IS SOUGHT IN THE PRESENT SUIT TO RELITIGATE MATTERS WHICH WERE CONCLUDED BY THE DECREE AND PROCEEDINGS OF THE UNITED STATES CIRCUIT COURT.

1. **The decision of the Federal court upon the application for a writ of assistance against the Kirchoffs, bars the present action.**

Record, pp. 18, 100, 186.

2. **The decree of foreclosure in the Federal court and the proceedings thereon under Federal authority are conclusive of the present action.**

a. Assuming the truth of all of complainant's evidence, it is nevertheless shown that before the decree in the Federal court the Insurance Company positively declined to assent to the contract which Mrs. Kirchoff claims.

Record, 107, 152, 215, 266, 267, 291.

b. The repudiation by the Insurance Company of Kirchoff's claims on November 5, 1879, constituted, even if there had been a contract between them, an immediate breach of that contract, and it was thereupon complainant's duty at once to interpose her defense to the foreclosure proceedings, if she had any.

Dingley v. *Oler*, 117 U. S., 490.
Kadish v. *Young*, 108 Ill., 170.
Saltsman v. *Bissell*, 75 Ill., 67.
Rogers v. *Higgins*, 57 Ill., 244.
Speck v. *Pullman Co.*, 121 Ill., 33.

c. *The complainant having failed to interpose her defense in the foreclosure suit, is estopped by the Federal decree from setting up claims now, which existed before that decree. The decree of the United States Court is a bar to the present action.*

Dowell v. *Applegate*, 152 U. S., 327.
Aurora v. *West*, 7 Wall., 82, 102.
Cromwell v. *County of Sac*, 94 U. S., 351.
Case v. *Beauregard*, 101 U. S., 688.
Dimock v. *Revere Copper Co.*, 117 U. S.
Bailey v. *Bailey*, 115 Ill., 551, 557.
Rogers v. *Higgins*, 57 Ill., 244, 247.
Harmon v. *Auditor*, 123 Ill., 122.
Stickney v. *Goudy*, 132 Ill., 313.
May v. *Coleman*, 84 Ala., 325.
Jones v. *Vert*, 121 Ind., 140.
Adan v. *Mergenthein*, 114 Ind., 303.
Caldwell v. *White*, 77 Mo., 471, 473.
Shelbina Hotel Assn. v. *Parker*, 58 Mo., 327.

d. *If the claims which the complainant now seeks to set up, did not, prior to the Federal decree, evidence a condition of things which would have prevented an absolute foreclosure, they cannot now be set up to deprive the Insurance Company of the benefits of the absolute foreclosure which it obtained in the Federal court.*

Mally v. *Mally*, 52 Iowa, 654.

IV.

THE FEDERAL QUESTION IS CONTROLLING. NO OTHER QUESTION IS INVOLVED WHICH IS DECISIVE OF THE CASE.

ARGUMENT.

The first and conspicuous feature of the case, which presents itself upon the first reading of the testimony and afterwards grows upon the mind as the proposition is dwelt upon, is the absolute illegality and immorality which pervades the alleged arrangement which complainant seeks to set up.

The agreement with which the Insurance Company is charged is an agreement that it would proceed with foreclosure proceedings already begun in the United States Court, in order that the title to the land might be perfected, and when thus "perfected" the contract for redemption should be carried out, or as stated in Kirchoff's sworn answer to the petition for a writ of assistance, the title should be conveyed to Kirchoff or such person as he should nominate.

The trouble with the title was the burden of the Kirchoffs' debts.

The mortgage to the Union Mutual Life Insurance Company was the first incumbrance upon the property. After this incumbrance were several subordinate liens of judgment creditors. The operation by which the Kirchoffs proposed to relieve the land of these liens was an operation which, had it been stated, was nothing less than a fraudulent foreclosure, the United States Court being made an instrument of the fraud in order that the property so "foreclosed" should be saved for the judgment debtors at the expense of those creditors who had recovered judgments against them.

It is more than probable that the Federal court would have given the Kirchoffs no relief upon such an agreement as this, but would have left the parties seeking to perpetrate a wrongs in the position in which they were found.

Indeed, we have already a suggestion of the answer which would have been given by the Federal Court to this questions in its ruling upon these very claims when presented upon the application of the Receiver for a writ of assistance against the Kirchoffs.

The State courts, however, have not adopted the view which we believe would have prevailed, and which did prevail in the Federal court. The decree of the State court has granted the relief which the Federal court refused, and to this decision we have prosecuted the writ of error from this court.

The first time that any claim was made on behalf of the Kirchoffs of such an agreement as that set up in this suit was when Julius Kirchoff on the 16th of November, 1881, filed his answer for defendant in error in the United States Court to the Receiver's petition for a writ of assistance. In that answer the present claims are substantially set out and the statement is made that Kirchoff's solicitors "have in course of preparation a bill in chancery setting up the foregoing facts and asking that complainant (Insurance Company) be required to execute its undertaking, or in default thereof, *that the decree* *herein be set aside and held for naught.*" (Rec., 101.)

This, then, was the intention of defendant in error and of her solicitors when the present bill was filed in the State court. We turn, therefore, with interest to examine the bill upon which it was hoped the State court could render such relief.

I.

THE BILL IS A BILL TO REDEEM FROM A MORTGAGE WHICH HAD BEEN PREVIOUSLY FORECLOSED BY THE FEDERAL COURT. SUCH A BILL IS NECESSARILY A BILL TO REVIEW THE FORECLOSURE DECREE.

In its terms it is stated as a bill to redeem.

The agreement as recited in the bill, is an agreement that "said company would allow your oratrix to redeem from said trust deed" upon certain terms. The bill alleges that the amount of the redemption money was fixed and that "the said company accepted said offer and agreed to allow such redemption." The Appellate Court (33 Ill. App., 607-612, see Appendix hereto) in passing upon this bill expressly stated that complainant's bill was a bill to redeem, and that it was not a bill for specific performance. In the opinion of the Supreme Court in this case (133 Ill., 368) the agreement upon which complainant relies is stated (page 373) as "an agreement under which the complainant was entitled to redeem." It was not, the Supreme Court said, a bill for specific performance. (Page 380.) When it came, however, to a consideration of the Insurance Company's defense to a bill for redemption filed in the State court, the Supreme Court of Illinois was unable to face the logical conclusion of this ruling, that the bill was not a bill for specific performance. It may have been, the Supreme Court says, a bill for redemption or repurchase. "But this is immaterial; the form of the transaction in a court of equity is not to be regarded. * * * Equity demands that the company should comply with the contract."

From these decisions, as well as the statements of the bill, and from the character of the contract upon which plaintiff's claims are based, we submit that the bill filed by Mrs. Kirchoff in the State courts of Illinois was a bill to redeem and not for the specific performance of a contract for purchase, and that such redemption involved a review of the decree of foreclosure.

The only legal impediment in the way of redemption is the decree of foreclosure rendered in the United States Court, and the question presented by the present bill is therefore nothing else than the question whether the mortgage upon the two lots now in controversy was ever actually foreclosed. Did the Federal decree operate as a foreclosure of Mrs. Kirchoff's right of redemption according to the methods provided by statute?

What does a decree of foreclosure cut off if it does not cut off all preceding contracts with a mortgagor respecting the premises mortgaged? Can a mortgagor summoned into court hold back, even by mutual agreement, any of his claims on the premises involved? Can he carve out of the proceedings certain interests and contract rights, and allowing a decree to go against him in its widest scope, be sure that those rights will afterwards find specific enforcement?

What does a foreclosure suit determine if it does not determine all questions involved in a subsequent proceeding for a redemption from the same incumbrance?

In the American and English Encyclopedia of Law, Vol. 20, page 626, it is said:

"The right of redemption is barred by a valid foreclosure to which the party claiming the right was made a party. This proposition is elementary and is supported by all the authorities."

A foreclosure suit is a suit for an accounting between a mortgagor and mortgagee in which a decree is sought which shall fix a limit to the mortgagor's right of redemption. These are the two salient features of a foreclosure sale; the accounting and the limit which is placed by the decree upon the period of redemption. They exist in every suit for foreclosure of a mortgage.

A bill for redemption from a mortgage is a bill which seeks precisely the same relief, except that it is filed by the mortgagor instead of the mortgagee. It seeks an accounting and it seeks to have a definite period fixed in which the mortgagor may redeem.

It will be seen, therefore, that the ground covered by the two suits is precisely identical. The subject-matter litigated in each case is the same. The decision of the court is upon the same rights. More than this, if the mortgagor who has brought a bill to redeem fails to pay the amount due within the time ordered, and the mortgagee obtains judgment for costs, the mortgage is by that very fact foreclosed. The decree of dismissal with costs of a bill for redemption is itself equivalent to a decree of foreclosure, and has this effect, although it does not expressly declare it.

Stevens v. *Miner*, 110 Mass., 57.
Bolles v. *Duff*, 43 N. Y., 469.
Smith v. *Bailey*, 10 Vt., 163.
Shannon v. *Spears*, 2 A. K. Marsh (Ky.), 311.

Beach v. *Cook*, 28 N. Y., 508, 535.
Perrine v. *Bunn.*, 4 Johns. Ch., 140.
Sherwood v. *Hooker*, 1 Barb. Ch., 650.
Adams v. *Cameron*, 40 Mich., 506.

The subject-matter and parties to the present suit and to the foreclosure suit are therefore identical. The only result of the decree in favor of Mrs. Kirchoff in this suit has been to declare the Master's deed issued by order of the United States Court, although absolute upon its face, to be a mortgage. It is a decree declaring the final decree of foreclosure in the United States Court to be a nullity, so far as foreclosure is concerned. Final foreclosure in this case, if the judgment of the State court is sustained, would not take place until the expiration of the period of redemption allowed by the State courts.

Briefly stated, the object of this suit is not only to review the decree of the Federal court, but when review is had it is sought to completely reverse that decree; to set it aside so far as the accounting is concerned; to have a new accounting; to set it aside so far as the foreclosure of the equity of redemption is concerned, and to fix a new period of redemption.

We find in the ingenious evasions of complainant's bill a substantial recognition of the principles for which we contend. Complainant was obliged in the stating part of her bill filed in the State court, to make a direct attack upon the Federal decree, for the only relief which was desired was the relief from that decree; the only grounds of relief stated were grounds which had been passed upon by the Federal court, and had complainant adopted the appropriate prayer consistent with the case made, the result would have been that the prayer would have asked, as Kirchoff suggested in his answer to the petition for the writ of assistance in the United States Court, "that the decree of the Federal court be set aside and held for naught."

Such a prayer as this would have presented an extreme instance of total want of jurisdiction on the part of the tribunal before which it was sought to bring the subject-matter of the controversy. As might be expected, however, the prayer avoided any such explicit attack. It contained no reference to the decree of the Federal court, and sought only to redeem from the mortgage which had already been foreclosed.

We submit to the court that the mortgage from the Kirchoffs to the Insurance Company, either has been foreclosed, or it has not been foreclosed.

If the mortgage has not been foreclosed, it must be because the proceedings in the United States Court, which are set out in the bill, amount to an absolute nullity. Complainant's prayer entirely disregards the foreclosure decree, and asks only that she be allowed to redeem from the trust deed. When this amended prayer was framed, the pleader must have had in mind a technical bill to redeem, proceeding, as is said in Jones on Mortgages, "upon the hypothesis that as to (the complainant) the mortgage has never been foreclosed, and is still in existence."

In this aspect of the case it is entirely clear that the present suit cannot be maintained in the State courts.

The only direct attack which can be made by original bill upon the final decree of any court of competent jurisdiction, is by a bill of review, or in the nature of a bill of review, filed in the same court in which the decree it is sought to attack was rendered. Under our system a State court would have no jurisdiction to review a foreclosure decree of a Federal court, because the subject-matter of the suit is not one which belongs to it to decide. The defect is one of power in the court—it is a want of jurisdiction over the the subject-matter of the suit. An appeal may not be taken from one trial court to another trial court.

It is easy to cite authorities in support of such a proposition as this, for so far as we are aware no other doctrine has at any time received the conscious support of any court in this country. Apparently counsel for complainant have no desire to meet the argument which would thus be forced upon them, by any admission that the present bill is one which seeks to treat the foreclosure proceedings in the United States Court as a mere nullity.

These proceedings cannot be treated as a nullity. As long as that decree of foreclosure stands unimpeached and unreserved it is valid, actual and binding. Complainant admits this. The allegations of her bill are to the effect that the original mortgage has been foreclosed.

Such is the alternative which she has elected; that is the case made by the evidence. The proceedings in the United States Court are a part of complainant's record. By this election, therefore, complainant's case must stand or fall.

The Kirchoff mortgage has been foreclosed, and notwithstanding this explicit admission made in the stating part of her bill, complainant in her prayer overlooks the foreclosure proceeding and asks for redemption from the original mortgage. The pleader who drafted the amendment to the bill and made up complainant's case as a suit for redemption frames the prayer for relief upon the remarkable theory that as to complainant, the mortgage from which it is sought to redeem, has been foreclosed and is no longer in existence. Redemption from the mortgage then is impossible, and complainant's bill must be dismissed.

In the case of *Nougue* v. *Clapp*, 101 U. S., 551, there is a decision of this court which we believe controls the case at bar. In that case there had been foreclosure proceedings in the state court of Louisiana, and a bill was filed in the United States Circuit Court to set them aside on the ground that there had been a fraudulent conspiracy to have the property sold under the mortgage for the purpose of cheating the complainant out of $14,000 due him. The opinion is by Mr. Justice MILLER, in which, speaking of an order entered by the State Court in the foreclosure case, he uses this language:

> "If this order was not obeyed it was for that court, not this, to give the remedy. If the court below refused to do it, there was an appeal to the Supreme Court of the State. After the sale, he could by a motion to the court have had it set aside, and that was the proper place for such a remedy. The laws of Louisiana also provide a remedy by a special proceeding to have a declaration of nullity of judgment in such cases as this, in the court where the decree is entered.
>
> There is no allegation that the plaintiff sought any of these remedies. We think for this court, after all this has been done, to undertake to decree that what that court did is void, to sit in review on its judgment and reverse its decree and set aside its sale, in a case where its jurisdiction is undoubted, is unwarranted by the relations which subsist between the two courts. It would be an invasion of the powers belonging to that court, and such a doctrine would, upon the simple allegation of fraud practiced in that court, enable a party to retry in a Federal court any case decided against him in a state court."

The Supreme Court of Illinois has had occasion to apply the same rule.

Rae v. *Hulbert*, 17 Ill., 572, was an action of debt upon a judgment of the Supreme Court of the State of New York commenced in the Cook County Court of Common Pleas. It was pleaded that the judgment was obtained by fraud in that when the defendant was ready for trial in the case in which the judgment was entered, by negotiating with him, he was induced to send away his witnesses; that, confiding in the false pretenses and fraudulent representations made by the plaintiffs and being deceived thereby, he dismissed his witnesses and allowed them to depart, and departed himself a distance of three hundred miles, and the plaintiffs then took judgment against him. The court says:

> "To this plea a demurrer was sustained, and we think very properly. In this there is no such fraud set out as would vitiate a judgment. The agreement for the settlement of the suit was a matter properly cognizable before that court, and should have been interposed for the purpose of postponing the trial before the referee, or should have been objected to the report when judgment was moved thereon, or *if for any cause, the defendant could not then present the objection, he should, at the earliest opportunity, have applied to that court to open or set aside the judgment and enforce the agreement to settle or to let him in with a defense.*"

In the case of *Windett* v. *Conn. Mut. Life Insurance Company*, 130 Ill., 621, there is a decision announcing substantially the grounds for which we contend in the present case. In that case it was Windett's evidence that after the foreclosure bills were filed in the Federal court, the Insurance Company agreed with him to extend the time for the payment of the moneys secured by the mortgages and to reduce the rate of interest. The first question the court considered, was whether the evidence showed that any such agreement had been made, and held that no such agreement had been established. The court then proceeds to say:

> "But let it be admitted that we are wrong in our construction of the evidence, and that there were really such agreements as are contended for. What then? Appellant should have applied for relief to the Federal court in which the foreclosure proceedings were pending. He is an able and experienced lawyer. He says that he was surprised at the prosecution of the foreclosure suits by the company, and regarded the filing of the supplemental bill, the taking of the defaults, the entry of the decrees of sale, and the sales thereunder, as being gross violations, each and all of them, of his understanding with the company. If he had gone before the Federal court when the defaults were taken, and produced evidence of an agreement to suspend the foreclosures and extend the time of payment, that court would undoubtedly have set aside the defaults and dismissed or stayed the proceedings. *It would have delayed the sales even after the decrees were entered, upon proof of such agreement.*

At any rate, the Federal court had jurisdiction of the person of the appellant by due service of process upon him, and also jurisdiction of the subject-matter of the litigation before it. One of the questions involved in the issues presented to that court was the right of the company to foreclose its mortgages. If the company had agreed to extend the payment of the mortgage indebtedness for five years, it was wrongfully proceeding to foreclose, and such agreement was proper matter of defense to be set up against the assertion of the right to foreclose. Another question involved in the issues before the Federal court was the amount of indebtedness upon the mortgages. If there was an agreement that the indebtedness should draw only six per cent. interest from a specified date, then it was wrong to enter decrees for interest at the rate of eight or nine per cent., and proof of such agreement should have been introduced by the defense, under the issues involved, to lessen the amount to be recovered.

Hence, it is manifest that the agreements which we are now asked to enforce involve not only matters over which the Federal court had jurisdiction, but matters which were embraced within the issues passed upon by that court. It follows that its decrees, unreversed by a direct proceeding, are final adjudications, so far as we are concerned, upon the subjects now urged upon our consideration. We have no power to review, change or annul those decrees."

A bill to redeem is necessarily a bill to review a preceding foreclosure of the same encumbrance, for, as was said by the Supreme Court of Illinois in the case of *Maloney* v. *Dewey*, 127 Ill., 395:

"*The right of redemption is involved in the question of foreclosure. No decree can be rendered in such a case without passing upon it, and the court first obtaining jurisdiction to pass upon it, must retain jurisdiction to the end.*"

II.

THE BILL ATTACKS THE FEDERAL DECREE ON GROUNDS WHICH, IF TRUE, WOULD AVOID IT AS AGAINST ALL PERSONS, AND IN ITS PRAYER TREATS THE DECREE AS A NULLITY, AND SEEKS TO RECONSIDER ITS SUBJECT-MATTER. THIS IS A BILL OF REVIEW.

We have already shown to the court that before the decree was entered in the foreclosure suit, the Kirchoffs had been informed that the Insurance Company recognized no contract for redemption. They knew, then, at the time the decree was entered up that the position of the Insurance Company was adverse; that its suit was hostile, and that the decree, *if allowed to stand*, cut of the right of the mortgagor to the mortgaged property.

Counsel for Mrs. Kirchoff deny these facts and assert that the decree being entered in pursuance of an agreement by which the title was to be perfected for the benefit of Mrs. Kirchoff as well as for the Insurance Company, Mrs. Kirchoff could not interpose any defense until after the Insurance Company, having secured a decece, insisted upon holding it for its own benefit and depriving her of her rights thereunder.

Let us assume that this contention of counsel is correct. Is the bill which they have filed in the State court any the less a bill for review of the decree of the Federal court? Let us look at the bill itself to determine its character, bearing in mind, also, the relation of the parties to each other and to the courts.

Courts are for the adjustment of variances or difficulties, for the merging of old rights, and the creating of new; for changing the situation of parties, as only a court can change it. It is against public policy for persons to agree or undertake to occupy the time and attention of the courts with pretended litigation in which there is no real controversy, and no change of attitude or relief sought to to be effected by the judgment. This, so far as the foreclosure of the mortgage subsisting between the Kirchoffs and the Insurance Company, is precisely what Mrs. Kirchoff claims that she agreed to do. Her bill alleges that she agreed beforehand with the Union Mutual Life Insurance Company what should be the outcome, effect and operation of the judicial proceedings instituted in the Federal court by the Insurance Company. No real change in these relations was to be effected by the intervention of that court. The relation of mortgagor and mortgagee which subsisted between them at the beginning of the action was still to subsist between them at its close, utterly unaffected in any material particular.

It is true there was a real controversy to be waged with junior creditors of the Kirchoffs who held liens on the mortgaged property subordinate to the mortgage of the Insurance Company. Against these lien holders a substantial judgment was to be taken, but the theory upon which these lien holders were made parties to the foreclosure proceedings was a false theory, if we assume the truth of the allegations in Mrs. Kirchoff's bill; for, if these allegations are true, the Union Mutual Life Insurance Company filed a bill in the United States Court against Mrs. Kirchoff, making the lien holders parties, upon the theory that the Insurance Company was waging against Mrs. Kirchoff a *bona fide* suit for actual foreclosure, to which these lien holders were necessary parties. This theory, if we accept the statements of Mrs. Kirchoff's present bill, was a sham and an imposition upon the Federal court, and it is very doubtful whether the Federal decree in the foreclosure suit has any validity whatever against the junior lien holders, if Mrs. Kirchoff's present allegations can be maintained. If the reality be, as Mrs. Kirchoff now states, then it was undoubtedly true that the Insurance Company and Mrs. Kirchoff were in collusion. They really were both plaintiffs, and the junior lien holders were the only defendants. The real purpose of the so-called foreclosure suit in the Federal court was not to foreclose a mortgage at all, but to beat judgment creditors out of their valid claims. Mrs. Kirchoff alleges that she and the Insurance Company found valid judgments standing in the way of their schemes. These judgments could not be paid; they must be beaten, and so by a foolishly unnecessary indirection, and in the light of what according to present statements was an imposition upon the Federal court, they led that court blindly and circuitously to accomplish for them their illegal schemes, which no court would knowingly have permitted.

The deceitful and fraudulent character of the alleged agreement appears in another way.

The stipulation which Mrs. Kirchoff now sets up necessarily involved the sale of the mortgaged property by the Master in Chancery. It necessarily involved the purchase of the lots now in question by the Insurance Company. It necessarily involved, in order that this purchase might be made, for the sum agreed upon, the exclusion of other bidders, for if third parties came in to bid the Insurance Company could not be sure of making its purchase, and Mrs. Kirchoff could not be sure of her contract rights.

Briefly stated, the result of the whole matter is this: If the Insurance Company and Mrs. Kirchoff entered into the agreement which Mrs. Kirchoff now claims, the proceedings and decree in the Federal court would by virtue of that agreement effect no substantial change in the relationship of mortgagor and mortgagee which existed between them. Mrs. Kirchoff in effect alleges that it was the intention and interest of the parties to the suit that there should be no foreclosure as between the principal parties; that there should be no real foreclosure sale, but only a pretended sale, fraudulent perhaps as against the junior lien holders, idle as between themselves, sham as towards the court.

If there was any such agreement as that now alleged by Mrs. Kirchoff, the decree of the Federal court was void, the fraud of the parties going to the substance of their contract and invalidating the decree.

Connolly v. *Cunningham*, 5 Pac. Rep., 473.

In Kerr on Fraud and Mistake (Am. Ed., 294), it is said that "A guilty party would not be permitted to defeat a judgment by showing that in obtaining it he had practiced an imposition on the court, for it would be an outrage on justice and common sense if a person could thus avoid the consequences of his own fraudulent conduct."

These are the grounds that Mrs. Kirchoff puts forward in the stating part of her bill as ground for relief in the present proceedings. The decree in the Federal court was obtained, she says, by virtue of an agreement which was fraudulent and void. This agreement she no doubt was unwilling to bring into the United States Courts, for these courts would not have become party to such an agreement by confirming it and assisting Mrs. Kirchoff to get the advantage which she expected from it. That alliance had already once been refused. (Rec., 99, 186.) The bill, therefore, was taken to the State courts of Illinois, and filed in the Circuit Court of Cook County.

Of course, if she was at liberty to treat the Federal decree as a nullity, if she was at liberty to repudiate its binding force, then there was no decree so far as she was concerned, and no relief was necessary, beyond the judgment of a competent court that the Federal decree was void. If, on the other hand, there had been a foreclosure, the only relief Mrs. Kirchoff needed, and the only relief which she has obtained, was the review and modification of the foreclosure decree.

This we submit the State courts had no authority to grant.

In the case of *Frisby* v. *Withers*, 61 Texas, 134, we find a case of remarkable similarity. In that case Withers claimed title to certain land as against Frisby and Gibson, by virtue of a judgment rendered in a State court of Texas. Defendants Gibson and Frisby alleged that the judgment was rendered upon a compromise agreement, made between them and the plaintiff's attorney in that suit, to the effect that Gibson and Frisby were to have conveyed to them the land claimed by them. It was alleged that these defendants had taken all necessary steps to defend the suit, as plaintiff knew: plaintiff was apparently afraid of the effect of this defense, and therefore agreed that if these defendants, Frisby and Gibson, would let the judgment go by default, the plaintiff would make them deeds to the tract of land claimed by them.

Upon this defense the court held that the judgment in favor of Withers was binding upon the defendants and all claiming under them, and the decision of the court was that, "Under the facts pleaded by these defendants, the judgment was not void and *could only be set aside, if at all, by a direct proceeding for that purpose.* * * * Under such facts the court did not err in excluding the evidence which was offered for the purpose of attacking that judgment."

In the case of *Randall* v. *Howard*, 2 Black, 585, it appears that a bill was filed in the United States Circuit Court for Maryland to redeem from the foreclosure of a mortgage. The mortgage had been foreclosed in the Cecil County Circuit Court of Maryland, and it was alleged, by the complainant in the new suit, that the proceeding had been carried through for the purpose of passing the title to defraud somebody else.

The court held that it would not grant any relief to the complainant from that foreclosure proceeding which had been conducted with his assent to defraud somebody else, and added:

"There are several grounds decisive against the relief prayed for. * * * The bill in this case brings in review various matters passed on in the progress of a suit by the Cecil County Circuit Court, a court of general jurisdiction, having complete control of the parties and of the subject-matter of controversy. It seeks to annul a sale of lands made by virtue of a decree of the Cecil County Court, sitting as a court of equity, in a cause pending between these same parties, to effect the distribution of the proceeds of the sale * * * and to have the mortgaged property sold. This is a direct and positive interference with the rightful authority of the State court. If there was error in the proceedings of the court, a review can be had in the appellate tribunals of the state. *If, as is charged, the decree is sought to be perverted and made the medium of consummating a wrong,* then the court, on petition, or supplemental bill, can prevent it. If, as appears by the pleadings, the surplus money arising from the sale is still undisposed of, then the whole case is under the control of the court, and no supplemental bill even is necessary to prevent the wrong."

And the court held that the United States Court had no jurisdiction to interfere with the action of the State court in that regard.

See, also,

Thompson v. *Tolmie*, 2 Peters, 157.
Ferris v. *Childs*, 1 D. Chipman, Vt., 336.
Van Meter v. *Van Meter*, 3 Gratton, Va., 148.
Parish v. *Marvin*, 15 Wis., 247.
Mercer v. *Stark*, 1 Smedes and Marshall's Ch. (Miss.), 477.

III.

IT IS SOUGHT IN THE PRESENT SUIT TO RE-LITIGATE MATTERS WHICH WERE CONCLUDED BY THE DECREE AND PROCEEDINGS OF THE UNITED STATES CIRCUIT COURT.

The matters involved in this proceeding, and which have been litigated through the State courts of Illinois, are matters which were settled by the foreclosure decree in the United States Circuit Court. The record does not show that they were actually presented to the court in the foreclosure case before decree, but this is not a matter of importance, for if the evidence is true, the present claims of the plaintiff would have offered a good defense to the foreclosure proceedings.

The record *does* show affirmatively that after decree in the Federal Court, Mrs. Kirchoff did present her present claims to the United States Circuit Court for adjudication, and that they were then overruled.

1. The decision of the Federal Court upon the application for writ of assistance against the Kirchoffs, bars the present action.

In the course of the proceeding in the Federal Court, a Receiver of the mortgaged property was appointed and by him a lease of the lots now in controversy was made to Mr. and Mrs. Kirchoff. The agreement which Mrs. Kirchoff sets up in this case was that all rent paid by her to this Receiver should be applied upon the redemption money of the property now in controversy. The lease did not contain any such provision as to the application of the rents, and Mrs. Kirchoff, after several payments of rent, refused to pay any more.

Thereupon, the Receiver filed his petition for a writ of assistance, and Mrs. Kirchoff, acting by her husband (Complainant's bill, Rec., 18), who was her agent throughout all these proceedings, filed her answer, setting up the agreement in question.

This answer makes no reference to the terms of the agreement touching the application of the rents. It did, however, set up the agreement for redemption, and ask that the writ of assistance be denied. No application was made at this time for any order modifying the decree of foreclosure or setting it aside. This relief, the answer alleges, Mrs. Kirchoff proposes to seek, her solicitors "having already in course of preparation a bill in chancery setting up the foregoing facts and asking that complainant be required to execute its undertakings in the premises, or in default thereof, that the decree herein be set aside and held for naught." (Rec., 100.) Upon this answer setting up the whole agreement which is now relied upon in this case, the Federal court decided against Mrs. Kirchoff, and the writ of assistance was issued. This, then, was an actual decision by the Federal court upon the present claims of the defendant in error.

The United States Court had jurisdiction to pass upon the question, and it did pass upon it. It ousted the defendant because she had no rights. The court could not have ousted her if it had found that she was there under a lawful contract of purchase, and that the Kirchoffs had executed their quitclaim deed in part performance. The court could not have ousted them if it had found that the lease called for the payment of money upon the general indebtedness, while the agreement provided that the Kirchoffs should hold possession and that rent should be credited upon the redemption money. These facts being found, the court would have kept them in possession. The determination of these facts is the decision of questions necessary to the decision of the whole case. In other words, the State court, when it heard the present bill, and when it decided complainant's rights upon her present bill, necessarily decided upon the same question which had already been passed upon by the Federal court. It is elementary that a decree is *res adjudicata* between the same parties and privies, and in reference to all questions necessarily involved in that decision. This proceeding is between the same parties; the same question arose in that case that arises in this case. Therefore we claim that the decision of the Federal court should have been held by the State courts to have been conclusive upon them in the decision of the questions submitted to them.

As a matter of fact, upon the first hearing of this case in the State courts, the plea of *res adjudicata* was sustained. Judge TULEY, the chancellor who heard the case in the trial court, in discussing the question says:

"There is another fact in this case, which I am of the opinion would prevent the complainant's obtaining relief. Kirchoff took a lease from the receiver of the United States Court, after the making of the alleged agreement. He paid rent for a time, and, being largely in arrears, the Receiver took a rule on him to show cause why he should not surrender possession. He, as stated, set up, in substance an agreement that the company was to convey to him the homestead in consideration of the quitclaim of the equity of redemption of himself and wife in the mortgaged premises, which quitclaim, he alleged, had been given. The United States Court ordered that he deliver possession, and he and his wife were ejected from the premises. This was done before any deed was issued to the company on the sale had under the decree in that court, and it was also after the company had, by Kendall, its attorney, advised the Kirchoffs that the company would not sell him the homestead back at the Rees valuation.

Notwithstanding this, the plaintiff delayed asserting her rights under this alleged agreement until after the deed was issued to the Insurance Company, and the proceedings were, in the United States Court, finally ended.''

Judge Tuley, therefore, dismissed complainant's bill. From the decision overruling and reversing this judgment of the trial court, the present writ of error is prosecuted, and we we submit that Judge Tuley's decision in this respect should be affirmed.

2. The decree of foreclosure in the Federal court is conclusive of the present action.

a. Assuming the truth of all of complainant's evidence, it is nevertheless shown that before the decree in the Federal court, the Insurance Company positively declined to assent to the contract which Mrs. Kirchoff claims.

Warfield and Kendall had no authority to make the so-called agreement. (Rec., 66, 84, 85, 113, 114, 168, 195, 196.) In fact, neither of them pretends to have made it on the strength of any general authority. The utmost of Warfield's claim is that he submitted propositions coming from the company which were accepted. (Rec., 84.)

Kirchoff knew that they were merely the representatives of the company. He knew, too, that his proposition looking towards such a settlement would be submitted to the home office of the company. But even if he did not, he cannot, when advised that the agent had no such authority, enforce the agreement, unless some act thereunder, prejudicial to himself, and irrecallable, has been done by him.

A principal is not legally bound by the unauthorized act of his agent, he is only estopped from denying the authority of such act in cases where third persons have been misled, to their prejudice, by the appearance of authority held out. The foundation of his liability is, not that he made the contract, but that, under the circumstances of injury to third persons, he ought not to be heard to deny it. It is obvious, therefore, that the third person invoking such estoppel, and thereby fastening upon the principal, liability for a contract he never made or authorized, should have acted in perfect good faith, with ordinary prudence, and have suffered substantial injury therefrom, or put himself in a position where he would be injured if the contract were not carried out.

Mechem on Agency, Secs. 289, 290.

The record places beyond dispute the fact that the company never authorized the so-called agreement, and promptly declined it upon the first information received. (Rec., 169, 215, 266, 267; Exh., 39, 142, 144.) Had Kirchoff been led, at this time, to a point from which he could not retire without injury? The only thing he claims to have done, in pursuance of the so-called agreement, was to have executed the quit-claim deed of September 5, 1879. He does not claim to have had any defense to the notes and mortgage. If he had, the foreclosure proceedings were still pending, and such defense could have been interposed. His situation was entirely the same as it would have been had the so-called agreement never been talked of, except, possibly, for the execution of his quit-claim deed.

But this quitclaim deed had not yet been delivered. Kendall testified that he told Kirchoff he "would take his deed, would write to the company in regard to the conveyance back to him; in the meantime he would not put his deed on record, not take an advantge of him, intending to keep the matter open, so far as I can recollect now, until he had definitely settled the terms of his contract with the company, if he had any." (Rec., 152.)

Kirchoff nowhere attempts to deny this. It is the only possible conduct on the part of Kendall consistent with the whole current of events, as disclosed by the record.

The deed was immediately returned with the company's explicit refusal to accept the proposition upon which it had been based. Kirchoff was immediately informed of this refusal, and given an opportunity to withdraw the deed. Kendall says:

"I know I had an interview with him (Kirchoff); I recollect how, after the receipt of that letter, and probably very soon after the receipt of it, in my office, at which interview the matter was talked over, and he was fully advised of the decision of the company." (Rec., 145.)

"I think I sent for Kirchoff on receipt of that letter; I know I had an interview with him after the receipt of the letter, very soon after, and very likely on the same day. I think I tendered Kirchoff his deed back again (Rec., 152); or at least I gave him an opportunity to withdraw the deed if he did not wish to deliver it; but he concluded to deliver the deed, insisting that he had a contract and would stand on his agreement with the company. I know I never recorded that deed without having an understanding in reference to it, and I do not think it was recorded by mistake." (Rec., 152.)

Neither is this denied by Kirchoff; on the contrary he expressly admits the substance of it when he says:

"I cannot remember whether they ever tendered the quitclaim deed, which we had executed to the company, back to me or not; there was some talk, but I said I would stick to my contract to give them a quitclaim deed and take the homestead. * * * I cannot remember

> whether he offered the deed back to me, but I remember there was some talk about it, and I said it was settled." (Rec., 291.)

If, after this testimony, any doubt remains of Kendall's having communicated the decision of the company to Kirchoff, it certainly is silenced by a circumstance wholly inconsistent with any other view of the facts. It will be remembered that Mrs. Kirchoff's and Mrs. Diversey's deeds were executed on the same day, September 5, 1879. The Diversey deed was recorded seven days thereafter, September 12, 1879. (Rec., 123.) But the Kirchoff deed was withheld from the record. The motive naturally suggested for such action, and the only one given by any witness in the cause is stated by Kendall as follows:

> "When I received the deeds from Mrs. Kirchoff and Mrs. Diversey I recorded the Diversey deed and held the Kirchoff deed in my office until I should hear from the company in regard to the conveyance to be made to Kirchoff." (Rec., 143.)

Also:

> "I think I stated the matter somewhat in this way to Kirchoff at the time; that I would take his deed, would write to the company in regard to the conveyance back to him; in the meantime would not put his deed on record, or take any advantage of him, intending to keep the matter open, so far as I can recollect now, until he had definitely settled the terms of his contract with the company, if he had any." (Rec., 152.)

No other reasonable motive for withholding the Kirchoff deed can be suggested. Now, is it reasonable to suppose that having withheld this deed from the record for two months, because he did not yet know if the company would approve of a sale to Kirchoff, Kendall would immediately put it on record, when the company disapproved of it, unless he had some understanding with Kirchoff that it was to be delivered notwithstanding such disapproval? What motive had Kendall to withhold the deed, pending the company's approval, that he did not have after the company's failure to approve? He apprehended that the company would not assent to Kirchoff's proposition, and, *therefore*, kept the deed so it could be returned. Are we to believe that as soon as he was certain that the proposition would not be accepted, he, without any further understanding, put the deed beyond Kirchoff's control? His having communicated the company's decision to Kirchoff, before recording the deed, is the only assumption of fact consistent with either his or Kirchoff's recollection of the events, or with the unchallenged motive upon which his whole conduct with Kirchoff had been based.

Here, then, whatever may have been his thoughts on the subject before, Kirchoff was explicitly advised that the so-called agreement had never been authorized by the company, and did not receive its consent now. A counter proposition was offered him. He could either have accepted that, and thus have had an agreement to which the company *was* a party, or withdrawn his quitclaim deed, and thereby been placed in precisely the situation he was before the deed was executed.

But Kirchoff had a good reason for not withdrawing the deed. The property mortgaged was not worth the mortgage debt A year later, at the foreclosure sale, the two lots appraised in 1879 at $10,000, were bid off at $17,000, in order to bring up the bids to the amount of the debt. The quitclaim deed released both the defendant in error and himself from the danger of a deficiency decree. He could not afford, therefore, to withdraw the deed. Is it possible that, but for this other motive, he would not have done so? Can the Court doubt, but for this release from the entire indebtedness being also at stake, he would have withdrawn his deed? Especially so, if he were anxious to repurchase the homestead, as he now professes to have been?

The practical question Kirchoff then had to decide was, whether he would withdraw the deed and lose the benefit of the release, or leave the deed, and thereby drop the matter of repurchasing the homestead, except upon the terms of the counter-proposition submitted. He was not willing to do either. He chose to leave the deed, secure the release, *and take his chance of enforcing the so-called agreement, notwithstanding its rejection by the home office.*

It is that chance he brings to the State court for enforcement.

The defendant in error was certainly unfortunate in having involved her homestead in an indorsement upon her husband's debts. It is a misfortune, however, in which she has many fellow-sufferers. It came principally from that common financial calamity, under whose hand promised values shrank into hopeless depreciation. The wards, whose trustee this plaintiff in error is, were among those who had also to weather the storm.

Her misfortune is no reason why the law should be changed. When she came face to face with the Insurance Company she was given a choice to retrace any steps taken under a misconception of her relation to the transaction, or to go forward to a new and authentic understanding. She and the plaintiff in error thus stood upon an equal footing. Her choice to do neither, but to force the company into an agreement to which it never assented, is not, we submit, a clean claim to bring into a court of equity for enforcement.

In the argument filed by the defendant in error in the Supreme Court of Illinois, it was insisted that after the delivery of the quitclaim deed, the representatives of the company continued to assure Mrs. Kirchoff that the rejected proposition would be carried out. We do not see how this, if true, could attach any liability to the Insurance Company. Kirchoff then knew that the representatives of the company were without authority in that respect. It is nowhere hinted that after the letter of November 5th they received, or professed to receive, any further authority from the home office.

Kendall says (Rec., 107) that he did nothing after that time with reference to this agreement.

Complainant had, immediately upon receiving the refusal of the home office, elected to deliver the deed and take her chances. She could not improve these chances by merely procuring new assurances from the discredited representatives. Neither would it have been good faith on her part to have relied upon any such assurances.

But it is plain, from the whole record, that no such promises were given her. In the light of the reports and correspondence, the making of such promises is simply incredible, except upon the theory that Warfield and Kendall were wantonly dishonest and disloyal. Have the kindness, though tedious, to read the letters of the company to Kendall and Warfield of November 5, 1879, rejecting the offer. (Ex. 143, 144.) Follow that with the letters of November 8th and November 26th of Kendall and Warfield, respectively, to the company. (Ex. 40, 41.) The correspondence then proceeded: December 3d

DeWitt writes to Warfield to put Kirchoff out of the house if he does not pay his rent. (Ex. 147.) December 6th Warfield changes the valuation on the homestead, without referring to the so-called agreement. (Ex. 43.) February 5, 1880, Warfield is again instructed to turn Kirchoff out. (Ex. 155.) February 7, 1880, Warfield replies:

"This matter has been placed in an attorney's hands for collection, but I hardly think he will succeed; we shall probably have to get an order from the court to put him out." (Ex. 53.)

May 7, 1880, the home office again brings to Warfield's attention Kirchoff's unpaid rent. (Ex. 160.) To this letter May 28, 1880, Warfield replies that "about the time the president was here last, I gave the matter to Wheeler, and he succeeded in getting $100 out of Kirchoff. Since then the Best Brewing Company have closed up Kirchoff's business, and he is out of funds, and like to remain so. I have written Messrs. Kendall and Bliss to get an order from the court to either pay the rent or vacate the premises." (Ex., 67.)

May 31, 1880, Kendall writes that he has "received a letter from Warfield, as receiver, saying he was unable to collect amount now due from premises occupied by Kirchoff, and requesting that measures be taken to eject him. Shall make application to court for assistance as soon as national convention is over, court having adjourned during the meantime." (Ex. 68.)

June 7th Warfield again writes:

"Referring to matter of rent due from Kirchoff for house on Rush street, have to say that he has to-day paid me $80, and promises to pay $60 per month, commencing on the 20th inst., until the account is squared. Have not much faith in his promise, and had it been earlier in the season would not have accepted the money; but under the circumstances thought it best to get the $80, and if the $60 is not forthcoming on the 20th, will immediately proceed to get possession." (Ex., 69.)

July 12th Warfield writes that he has instructed Kendall to get Kirchoff out, "and as soon as he does, I will rent the premises to somebody who will pay more promptly." (Ex., 73.)

Can the court believe that during the period of these letters the representatives of the company were assuring Kirchoff that the so-called agreement would be carried out? It is plain that the company did not change its attitude toward the proposition after November, 1879. Did Warfield and Kendall reaffirm the so-called agreement, in the face of the then known wishes and instruction of the company?

Warfield says he told Kirchoff the foreclosure would go on and sent him to Kendall for particulars. (Rec., 63.) Kendall says he did nothing after the receipt of the letter of November 5, 1879, in reference to the alleged agreement with the Kirchoffs. (Rec., 107.)

The assumption that they did is not supported by any tangible testimony. Kirchoff's reference to it is as follows:

> "After we delivered the quitclaim deed they foreclosed; I asked Warfield what they meant, and he said I need not be afraid; it was better for us; and he told me to see Kendall. Kendall said he thought there were some judgments against the lots, and to make it safer they had to do it; it would be better for us, and we should have the deed after that. Mr. Kendall said it would not affect the contract, and would be better for the property." (Rec., 33.)

> "After we gave the deed, September 14, 1879, I found out they wanted to foreclose. Mr. Warfield told me it was all right, and that Kendall would explain." (Rec., 40.)

From this it will be seen that whatever assurances were given came from Kendall.

Warfield says:

"After the Kirchoff deed had been delivered and recorded, Mr. Kendall found that there were certain objections to the title of the property which could be removed by foreclosure. I notified Kirchoff that the proceedings would go on, in order to perfect the title, and referred him to Kendall for particulars. As I remember it now, I told Mr. Kirchoff we would have a deed from the Insurance Company executed, and the mortgage back, signed. It is my impression that Kendall prepared the deed and sent it to the company for execution. I did not think it would be necessary to wait until the title was perfected in the Insurance Company by a foreclosure before the deed was delivered." (Rec., 63.)

As Kendall sent to the company for execution but *one* blank deed for conveyance, this conversation of Warfield with Kirchoff must have occurred *before* the receipt of the company's letter rejecting the proposition, and is, therefore, pointless. But whatever the conversation was, or whenever it occurred, Warfield confirms Kirchoff that he was sent to Kendall for particulars.

It must not be forgotten, either, that this testimony of Warfield was given before he saw the correspondence between the company and himself, and when the whole transaction lay in his mind, in the confusion produced by the lapse of seven years.

Kendall's recollection upon this point appears in the record as follows:

"Q. Were you ever instructed by the company or Mr. Warfield to eject him (Kirchoff) from the property?

A. I think I was requested by Mr. Warfield to get possession for him as Receiver of the property occupied by Kirchoff, because he had failed to pay rent, as stipulated in his lease; and I think I intended to have done so, but I do not think I ever got as far as to make any application to the court for assistance in the matter.

Q. Did Kirchoff ever inquire of you why you were proceeding with the foreclosure?

A. Yes, he did on one occasion.

Q. What did you tell him?

A. I told him that certain complications in the title that I had discovered since the delivery of his quitclaim deed, pertaining to the homestead lot, made it necessary in my opinion, to proceed with the foreclosure, get a decree and have it sold.

Q. Was any reference made to this agreement at that time?

A. Well, yes; *I think Kirchhoff had something to say about his buying back that property*, with reference to the effect the foreclosure proceedings would have; I did not discuss that matter much with him: *I think I told him that it would not make any difference.* I recollect explaining to him that, in any event, it would be better for the title that it should be foreclosed in that way, to get rid of this intervening incumbrance; and until that was done the company would not give a good title to it, nor take a good title back under a mortgage.

Q. You say you told him at the time, that the foreclosure would have no effect on the bargain that had been made?

A. I think I told him substantially that.

Q. And did you give him the idea at the time, that the foreclosure proceedings would improve the title, and that it would be for his benefit as well as for the company's?

A. *I did, in the event that he became the purchaser.*" (Rec., 153, 154.)

The key to the correct interpretation of this conversation is in the attitude, or relation, of Kendall and Kirchoff to each other at that time.

What was the attitude of Kirchoff and Kendall to each other at the time of this conversation? Kendall had previously informed Kirchoff that the so-called agreement was declined by the company, and that he could withdraw his deed. Kirchoff, with his eye upon the effect of the deed as a release, had declined to do so; but, on the contrary, leaving the deed, announced his determination to stand by the so-called agreement, notwithstanding its rejection by the company. The lines to be pursued thereafter by each of them were clearly marked. Kendall would go on with the foreclosure, Kirchoff would insist upon the agreement. When, therefore, Kirchoff asked if the foreclosure would affect his agreement, the only answer Kendall could give would be in the negative. For, if the agreement had a good basis, either in law or in fact, the decree would respect and enforce it. Kendall was careful, however, to tell him that the foreclosure proceedings would be a benefit to him "only in the event that he became the purchaser."

Was there anything in this conversation, reported vaguely and indefinitely to us by an adverse witness, which convinces the court that Kendall, in the very teeth of the company's instructions, intended to bind the company *anew* to the so-called agreement? If so, he was guilty of nothing less than treason against his principal. Was there anything in the conversation calculated to mislead Kirchoff? He knew the company's previous attitude, and his own position with reference thereto. He had no right to infer from Kendall's telling him the foreclosure would not affect his contract, that such contract was renewed. Knowing it had been repudiated once, he cannot thus carelessly become the beneficiary of the rule of estoppel, and force a contract that was never made.

b. The repudiation by the Insurance Company of Kirchoff's claims on November 5, 1879, constituted even if there had been a contract between them, an immediate breach of that contract, and it was thereupon complainant's duty at once to interpose her defense to the foreclosure proceedings, if she had any.

It is the argument advanced by counsel for the Kirchoffs, that the agreement upon which complainant relies in this suit would have furnished no defense to the foreclosure proceedings, for the reason that the agreement stipulated that the foreclosure proceedings should go on without defense: that decree should be entered, and that the property should be sold. An agreement that there shall be foreclosure, it is said, is no defense to the foreclosure.

The argument omits the essential element in the case, upon which complainant relies. The agreement was not merely that there should be a foreclosure, but that there should be a foreclosure *for the benefit of the Kirchoffs.* After the Insurance Company had declined Kirchoff's proposition; had refused to accept Mrs. Kirchoff's deed as part of any contract for redemption and after Kirchoff had, as he says, notified the company, when the company tendered back his deed and refused further performance on its part, that he, Kirchoff, would stick to his contract, and proposed to consider it settled—so far as concerns this contract—after this transaction had taken place, the one conspicuous fact in Kirchoff's mind must have been that the Insurance Company had declined to be bound by the contract he claimed; had refused performance, and had *then* committed a breach on its part, if ever any breach was committed at all. From this time on, he knew that the foreclosure proceedings were not being prosecuted for the benefit of Mrs. Kirchoff or himself, and then was the time for him to have interposed his defense to those proceedings.

The question whether in this state of facts the Kirchoffs could have set up the agreement, upon which they now rely, as a defense to the foreclosure proceedings in the United States Court, is necessarily determined by the question whether the Insurance Company committed a breach of this agreement, if any agreement existed, in such time that the Kirchoffs might have used it as a defense to the proceedings in the Federal court. So far as concerns the time in which this agreement could have been used in the Federal court, it may be sufficient to say that it could have been used at any time before the Master's deed was issued upon the Federal decree. Certainly it could have been used as a defense at any time before foreclosure decree was actually entered. As a matter of fact, the breach was committed, if ever, on receipt by Kendall of the letter of November 5, 1879, when complainant was notified that the Insurance Company refused to be bound by the contract which the Kirchoffs now claim, and tendered back to them Mrs. Kirchoff's deed. At this time, if their claims are true, the Kirchoffs would have been entitled to bring a suit for damages against the Insurance Company, and in that suit they could have recovered whatever damages might have been sustained. We have already referred to the illegality of the contract. If the contract had been shown by the evidence to exist, and had been made the subject of a suit for damages, complainant would have sued to recover damages, in the first place, for breach of the contract of the Insurance Company to "perfect" the title. The measure of the damages would have been the extent of the incumbrances upon the property, now sought to be redeemed, owned by junior creditors and, in addition to these incumbrances, such further legal damages as complainants might have sustained. Such an action at law, we repeat, if it could have been instituted at all, could have been instituted as soon as the Insurance Company refused performance of the alleged contract. Therefore if the contract could, at that time, have been made a subject for an action at law, it could also have been set up in defense to the existing foreclosure suit, and, if it could have been set up, the Kirchoffs should have done so. It will not do for a defendant, having a valid defense and intending to insist that proceedings in the Federal Court as to him are an absolute nullity, nevertheless, to lie by and reserve that defense for a separate proceeding in the State Court.

The general rule determining the time when a breach of contract occurs under such circumstances as those set out at bar, is stated in the case of *Kadish* v. *Young*, 108 Ill., 170, where it was held that where a buyer before time for delivery, repudiates a contract, and gives the seller notice of that fact, the latter may act on such notice and treat the contract as ended and bring his action as once for a breach of the contract, or he may disregard the notice and await the time when the contract is to be performed, and then hold the buyer responsible for all the consequences of non-performance.

In the case of *Dingley* v. *Oler*, 117 U. S., 490, the same general doctrine was announced, and in this case it was held that certain letters shown in evidence were not a final refusal to perform a contract, and therefore constituted no breach. The cases referred to are cases in which no action at law was pending, and they show that where no suit is actually in existence, the parties to the contract have an election either to bring suit at once, or to take such benefit as they may find in delay.

When a suit is actually in existence, this right of delay is necessarily subject to another rule, that a person shall not sleep upon his rights, and that a defendant in a suit who neglects to interpose his defense, is bound by the judgment which is finally rendered *upon all defenses which he might have asserted*, whether he did actually assert them or not.

The case of *Saltsman* v. *Bissel*, 75 Ill., 67, was a bill in equity filed by Saltsman against Bissel and another, "to enjoin collection of a judgment at law upon the ground that it was taken in violation of an agreement to continue the case until a subsequent term of the court."

The court says:

"The evidence is very unsatisfactory whether such an agreement as is claimed by the bill, was in fact made; but aside from that the evidence clearly shows that appellant was present in the court when the default was taken against him and *it is not pretended that he made any effort to have it set aside.* If the default was taken in violation of an agreement to continue the case, appellant being present when the case was called, should have made known the agreement to the court, or *at all events should have moved to set aside the default.* His remedy was complete at law, and it was the result of his own negligence that he did not avail of it. Equity, under such circumstances, can afford no relief."

In *Rogers* v. *Higgins*, 57 Ill., 244, it is stated:

"The principle of *res adjudicata* embraces not only that which was actually determined in the former case, but also extends to any other matter properly involved and which might have been raised and determined in it.

In the case of *Speck* v. *Pullman Co.*, 121 Ill., 33, it was attempted upon a bill filed in the Superior Court of Cook County, to vacate and set aside a sale and order of confirmation and the subsequent deeds made in a partition proceeding had in the same court, upon the ground, among others, that the attorney of the Connollys, complainant with others, had been bribed to assent to an improper sale. The court, however, seeing that the evidence was clear, that before the order of confirmation the

Connollys had been informed of all that they afterwards knew in regard to the transaction alleged to be a bribery, asserted the rule, "that the order of confirmation is conclusive as to all matters upon which the court might have been called upon to pass, had the parties chosen to have brought them forward as objections to the confirmation."

When decree was entered in United States Court in the foreclosure suit of the *Union Mutual Life Insurance Company* v. *Elizabeth Kirchoff*, the question to be determined by that court was whether the Insurance Company then had the right to foreclose its mortgage, by ascertaining the amount due from the complainant at the rate of interest prescribed in the note, and to have a decree, for the immediate payment of the whole sum, and if by reason of any contract it did not have the right to do so, it was the plaintiff's business to interpose her defense in that suit, and having failed to do so her mouth is closed.

c. The complainant, having failed to interpose her defense in the foreclosure suit, is estopped by the Federal decree from setting up claims now which existed before that decree. The decree of the United States Court is a bar to the present action.

If we have established that the agreement, which is the basis of the present suit, could, if true, have been interposed as a defense in the foreclosure proceedings in the United States Court, it necessarily follows that, having failed to present that defense in the United States Court, complainant is barred from any further action upon it. For a decree of a court of competent jurisdiction is conclusive as between the parties of every defense which could have been urged to prevent its entry.

The opinion of this court in the case of *Dowell* v. *Applegate*, 152 U. S., fully sustains this proposition. That suit involved the title to a forty acre tract of land, which Dowell claimed under a decree of the Federal court, and a master's deed issued under that decree. The suit was brought in a state court of Oregon by Daniel W. Applegate for the purpose of obtaining a decree enjoining Dowell from asserting any title or claim by virtue of the latter's deed under the decree of the Federal court to the tract of forty acres which had previously been conveyed to plaintiff Applegate by William Applegate. The bill admitted that the tract of land in controversy was embraced in the deed made by the Master to Dowell, averring that a conveyance by William Applegate to Daniel W. Applegate was prior in time to the commencement of the suit in the Federal court, and that its validity was not put in issue or determined by the decree of that court. The defendant, Dowell, answered, basing his claims upon the decree of the Federal court and the sale under it at which he purchased. This court in its opinion, after holding that the decree of the Federal court, relied upon by Dowell, could not be treated by the State court as a nullity, said:

"Upon what principle can it be held that that decree being unmodified and unreversed does not conclude the parties to the suit in which it was rendered, in respect to the liability of the lands described in it for the demands of Dowell as ascertained and settled by the court? It is said that the deed of October 8, 1874, under which Daniel W. Applegate claims forty acres, was not distinctly put in issue by the pleadings or determined by the decree. But its validity was involved in the larger question presented by the pleadings as to the right of Dowell to subject to his demands the interest of Jesse Applegate in all the lands referred to—those covered by donation claim number 38, and those not within that claim. The decree directing the sale of all the interest of Jesse Applegate in the 121.55 acres on the 1st of January, 1869, was an adjudication, as between Dowell and the defendants in that suit who asserted title to those lands, that no claim asserted by either of them could stand against the right of Dowell to have those lands sold.

It is disclosed by the present suit that when Daniel W. Applegate answered Dowell's bill he held the deed of October 8, 1874. If Daniel W. Applegate became, when taking that deed a *bona fide* purchaser of the forty acres of land now in dispute, and if the title so acquired was superior to Dowell's right to have that land sold for his demands against Jesse Applegate, it behooved him to assert that title in defense of the suit brought against him. The very nature of that suit required him to assert whatever interest he then had in the lands or any part of them that was superier to any claim of Dowell upon them, whether by judgment liens *or in any other form.* So far from pursuing that course—he forebore purposely, as may now be inferred—to claim anything in virtue of the deed of October 8, 1874, and long after the decree under which Dowell purchased he comes forward with a new, independent suit, based alone upon that deed, as giving him a superior title. His object is—certainly the effect of this suit, if it be sustained, will be—to retry the issues made in Dowell's suit, so far as they involved the latter's claim to have the forty-acre tract subjected to his demands. The decree of the Federal court was an adjudication as between all the parties to the suit in that court, that Dowell was entitled, in satisfaction of his claims against Jesse Applegate, to subject to sale all the lands his bill sought to reach, which the decree directed to be sold. *And that decree, never having been modified by the court that rendered it, nor by this court upon appeal, necessarily concludes every matter that Daniel W. Applegate was entitled, under the pleadings, to bring forward in order to prevent the sale of the lands claimed by him, by whatever title.*

Having remained silent as to the deed of October 8, 1874, and having allowed the suit in the Federal court to proceed to final decree upon the question as to whether the lands described in the bill could be subjected to Dowell's demands—which description included the forty acres here in dispute—and having been defeated upon that issue, and the decree having been fully executed, he cannot have the same issue retried in an independent suit based solely *upon a title that he was at liberty to set up, but chose not to assert, before the decree was rendered.*"

In the case of *Jones* v. *Vert*, 121 Ind., 140, the court says:

"It is undoubtedly true that a judgment in a foreclosure suit, or in a suit to quiet title, is conclusive of any claim or title adverse to the plaintiff in that case, as against all who were made parties; and this is so whether the adverse interests or titles of the defendant are specially set up or not."

In *May* v. *Coleman*, 84 Ala., 325, it is held that:

"When a pending suit is compromised, unless it is brought to the attention of the court before the final decree, the parties will be concluded and estopped from setting up a compromise thereafter. A supplemental answer is the proper mode to bring the compromise and settlement before the court, on which to try the issue thus presented."

d. If the claims which complainant now seeks to set up, did not, prior to the Federal decree, evidence a condition of things which would have prevented an absolute foreclosure, they cannot now be set up to deprive the Insurance Company of the benefits of the absolute foreclosure which it obtained in the Federal court.

The complainant in this case, in effect claims that after the decree in the Federal court, and after the confirmation of the Master's deeds issued by authority of that court, she still held an equitable title to the two lots in controversy by virtue of an alleged agreement made prior to the Federal decree. The same claim, therefore, which is now set up as the basis of this proceeding, must have existed prior to the entry of that decree. Can it be doubted, if this claim of title had been brought to the attention of the Federal court which entered the decree, that that court would have considered such claim, and if valid, would not that court have preserved in that decree all the rights now claimed by defendant in error? If Mrs. Kirchoff had no rights then, of which the Federal court could have taken cognizance and enforced, in that proceeding, she certainly has none now so far as that property is concerned, which can be enforced in this, an independent proceeding.

In the case of *Mally* v. *Mally*, 52 Iowa, 654, the plaintiffs brought an action for the possession of certain real estate, title to which they had obtained under the foreclosure of a mortgage. In defense of the proceeding the defendants, who had been the mortgagors, set up a written contract which they alleged had been made with the mortgagee prior to the foreclosure. This contract provided for a life lease on a portion of the land in question, to Christine Mally, one of the defendants and the wife of the other defendant, and in it other concessions appeared to have been made by the mortgagee for the benefit of the mortgagors. It appeared that these claims were not set up in the original foreclosure proceedings until after the judgment of the court was announced. Judgment of foreclosure was entered against the defendants, the property was bid in by the mortgagee and deeds regularly issued as in the case at bar. The action above referred to was then brought, by the parties holding sheriff's deeds, for possession. Judgment was rendered for the plaintiffs and the defendants appealed. The Supreme Court of Iowa in its opinion in this case says:

"The defendant insists that the plaintiffs are not entitled to the immediate possession of the property because of the provisions of the written contracts set out in the answer and the amendment thereto. The plaintiffs in the foreclosure suit prayed for an unconditional foreclosure of the mortgage. The decree rendered is an absolute one, accompanied with the usual incidents, and to be followed by the usual consequences of an absolute foreclosure. It authorized a sale, to be followed, in the absence of redemption, by sheriff's deed, entitling the purchasers to immediate possession. Such a sale has been made, and such a deed has been executed. *If any facts existed at the time of the foreclosure, under which the plaintiffs would not have been entitled to an absolute decree of foreclosure, these facts constituted pro tanto a defense to the plaintiff's action* and should have been pleaded as such in the foreclosure proceeding. These written contracts constituted such partial defense, or they did not. If they constituted such partial defense, they should have been set up and relied upon in the foreclosure proceeding, and cannot be made available now. *Hackworth* v. *Zollers*, 30 Iowa, 433; *Dewey* v. *Peck*, 33 Iowa, 242; *Lawrence Savings Bank* v. *Stevens*, 46 Iowa, 429; *Collins* v. *Chantland*, 48 Iowa, 242.

If these contracts did not then evidence a condition of things which would have prevented an absolute foreclosure, they cannot now be set up to deprive the plaintiffs of the benefits of the absolute foreclosure which they have obtained.

The defendants did offer to set up the contract set out in the original petition as a defense in the foreclosure proceedings, but not until after the court had announced its judgment in the case. The court refused to allow the amendment as coming too late. It was clearly within the judicial discretion of the court to refuse to allow the amendment under the circumstances disclosed; *and if it were not, the decision of the court, not having been appealed from, is conclusive upon the defendants.* In any view of the case the written agreements do not now constitute a defense to the plaintiffs' action."

IV.

THE FEDERAL QUESTION IS CONTROLLING. NO OTHER QUESTION IS INVOLVED WHICH IS DECISIVE OF THE CASE.

During the progress of this litigation, counsel for the complainant have argued alternately that their bill is a bill to redeem, or that it might be sustained as a bill for specific performance of a contract. The inconsistency of the two theories with each other is, of course, at once apparent. When they proceeded on the theory that they were seeking the relief of redemption from a mortgage, they were confronted with the Federal decree. When they attempted to establish a case for specific performance of a contract they were met not only by the Federal decree and the question of *res adjudicata*, but also by the Statute of Frauds, And now in this court when they find themselves utterly concluded on the first of the two propositions, we shall not be surprised to see them fall back to the position that the case is one for the specific performance of a contract; that the state courts had exclusive jurisdiction to enforce such a contract; that the relief granted was specific performance instead of redemption; and that therefore this court has no jurisdiction to review the question.

To such a proposition the record, when taken as a whole, is a complete answer. For it shows,

1st. That the pleadings make out no such case.

2d. That the evidence makes out no such case.

3d. That the relief granted by the decree complained of was redemption and not specific performance.

When the bill was filed in 1882, a claim was made of the right to the specific performance of the contract. In 1887 the bill was amended and made to include the prayer for redemption. The prayer in the amended bill was based substantially on the same allegations as in the bill originally filed.

The agreement claimed was an agreement by which complainant was to be allowed to redeem from the trust deed; and while this prayer for relief asked alternately for redemption in accordance with the terms of the agreement, and that the defendant might be compelled to perform the said agreement, the specific performance which was asked was the specific performance of an agreement to redeem. No other agreement was mentioned or referred to in the bill.

Among other defenses to this bill the defendant set up the Statute of Frauds, and this defense was sustained. In the trial court Judge TULEY, in his opinion dismissing the bill, said:

> "I am satisfied that, under the authorities, I can give no relief in this case, either as a bill for specific performance, or as a bill to redeem, or other relief whatever."

From the decree dismissing the bill, complainant appealed directly to the Supreme Court of Illinois, and on this appeal, Mr. Justice SCHOLFIELD, speaking for the court, said:

> "If the complainant were to have a decree to all she shows herself entitled, it could only be that she be allowed to redeem pursuant to the terms of the agreement." (Rec., 293.)

128 Ill., 199 (203).

The first appeal was dismissed by the Supreme Court on the ground that a freehold was not involved, and was next considered by the Appellate Court on a writ of error. In deciding the case the court said:

> "The complainant filed her bill to redeem in June, 1882. The lots she was to redeem and the principal sum she was to pay, as well as the rate of interest, are definitely fixed by the agreement. The time at which the interest was to begin and the amount and time of payment of the installments are left uncertain. But this is not a bill for specific performance."

33 Ill. App., 613.

(See, also, Appendix to this brief.)

The Supreme Court, on the appeal from the judgment of the Appellate Court, begins its opinion with this significant statement:

> "This was a bill in equity brought by Elizabeth Kirchoff * * * against the Union Mutual Life Insurance Company to redeem (certain property) to which the company acquired title under a quitclaim deed from the complainant and her husband, and under certain foreclosure proceedings in which she, her husband and others were defendants."

After discussing the evidence and holding that the agreement claimed was one under which the complainant was entitled to redeem, the court said:

> "We have said nothing in reference to the argument that this is a bill for specific performance and hence falling within the Statute of Frauds, as we have not regarded it as a bill of that character." (Rec., 299, 305.)

133 Ill., 371, 380.

It will be seen, therefore, that the Supreme Court of Illinois did not rest its judgment upon the question of whether or not the proper relief in the case was the specific performance of a contract; that court expressly says that it did not consider the case as one of that character. On the other hand, the court states in substance that it *does* rest its judgment on the ground that the bill and the evidence make out a case of redemption, and proceeds to explain the manner in which such redemption should be allowed.

But aside from this, it must be admitted that the bill is either a bill for specific performance or a bill for redemption. It may be immaterial what name is given to the bill. It is not, however, immaterial what is its substance, and from the nature of the right asserted, the claim made must be either a claim for specific performance of a contract for conveyance of real estate, or else it is a claim of a right to redeem from a mortgage. Complainant claims one of these two things, or she claims nothing. It follows, therefore, that one of the two titles suggested must correctly describe complainant's bill.

It is equally apparent that the bill cannot be *both* a bill for redemption and a bill for specific performance, for if complainant is entitled to redeem from the incumbrance to the Insurance Company it must be because the foreclosure in the United States Court is void. On the other hand, if complainant is entitled to the specific performance of the agreement recited, that right must be based upon the validity of the foreclosure decree. The complainant cannot in the same breath make two cases inconsistent with each other and ask in the alternative for relief upon either state of facts which the court may believe.

Complainant has taken the benefit of the decisions of the State court and has avoided the defense of the Statute of Frauds by insisting that the present bill is not a bill for specific performance of a contract. The opinion of the State Supreme court which this court will consider as defining the grounds on which the decree of that court rests, expressly says that it does not regard the bill as one for specific performance. Can the complainant be permitted in this court to abandon this position, now that the Statute of Frauds is out of the case, and attempt to sustain the jurisdiction of the State courts and exclude this court from taking jurisdiction of this writ of error, upon the ground that her bill is a bill for specific performance? We do not believe that this court will so hold.

It necessarily follows that the ground covered by the present case was completely covered by the previous decree of the Federal court. Every claim presented to the State court in this suit had either already been presented before the Federal court in the foreclosure suit, or should have been so presented. The larger issue of whether the Insurance Company in that suit had the right to the absolute foreclosure of its mortgage, as against all the rights of the defendants to the suit, in that property, included every issue that could be made in the present case, and when the State court undertook to grant relief to the complainant in this suit, that court failed to give to the Federal decree the effect to which it is entitled. And we again submit that this is the controlling question in the present case.

In conclusion there are two or three matters which we would like to suggest to the court without extended argument.

We have already referred to the essential immorality which pervades the plaintiff's claim. We desire now to call the attention of the court, briefly, to the character of the testimony advanced in support of the claim.

All the witnesses for the complainant have a lively interest in the subject-matter of the suit. Kirchoff, if not actually the party in interest, was at least the husband of the complainant and her agent, largely to be benefited by a successful result. Warfield and Kendall were both discharged employes of the Insurance Company, and so far at least as Warfield was concerned, relations with the company were far from friendly (Rec., 65, 66), while on the other hand, Julius Kirchoff was at the time the testimony was taken in this suit, in close business relations with him. (Rec., 66.)

So far as concerns the former employes, it is perfectly clear upon the record, that if their testimony in this case is true, their letters and reports to the Insurance Company were not true, and it is equally clear that if their letters and reports were true, their testimony in this case, so far as it supports the alleged agreement is utterly false.

Let us look into their testimony and see whether there is anything contained in it which will determine whether we ought to rely upon the contemporaneous record made by Messrs. Warfield and Kendall, or whether we should rely upon their testimony in this case.

Kendall testifies:

"Mr. Kirchoff made some arrangements through Mr. Warfield, *I think*, the financial agent of the company, to redeem his homestead. * * * *These negotiations were not conducted by me*. I was only advised of them as they were going on, by Mr. Warfield, and by conversations with Kirchoff." (Rec., 103.)

Warfield testifies:

"Personally, as agent of the company, *I did not make the agreement heretofore testified to;* what I did was to submit to the Kirchoffs propositions as propositions coming from the company. Whatever I did in the matter was communicated to the company or its officers." (Rec., 84, 85.)

It is clear that the contract which complainant now seeks to establish was not made with Kendall, or, at least, that Mr. Kendall and Mr. Warfield have an opportunity to divide the doubtful honors in the case, each being willing to assist but unwilling to play the principal part.

It must be borne in mind also that Mr. De Witt, the President of the Insurance Company, during the period of all these alleged transactions, by his testimony in this case, emphatically denies that he had any conversation with Warfield or Kendall in relation to this alleged agreement or that any such proposition was communicated to the company until he received the letter from Kendall of November 1, 1879, in which the draft of the proposed deed to the Kirchoffs, for the homestead lot, had been sent by Kendall to the company. He also denies that any such proposition was authorized by the company. (Rec., 167–172.)

When we come to Kirchoff's testimony we find some confusion. He says (Rec., 35): that he made the contract with Mr. Warfield and Mr. Kendall. This he repeats (Rec., 37), saying that he personally made the contract upon which complainant relies with Mr. Kendall and Mr. Warfield. Afterwards Kirchoff grows less certain (Rec., 42), saying that the contract was made with Mr. Warfield. He does not remember whether Kendall was even present, and subsequently Kirchoff settles down to the proposition (Rec., 44) that he made his contract with Mr. Warfield alone.

Kirchoff is equally uncertain as to *when* he made the contract. Sometimes he says that he made it in 1878 before the first foreclosure bill was filed. (Rec., 52.) He also says (Rec., 37) that the contract he made was in 1879.

There is some uncertainty between the witnesses as to whether the contract embraced redemption of one lot or of two lots. Kirchoff says throughout his testimony that it was the homestead that was to be redeemed. The homestead lot was a corner lot, fronting on Rush street. There was a smaller lot, not contiguous to the homestead lot, but barely touching it on one corner, this lot fronted on Pine street, and the decree of the state court has allowed redemption both of the homestead lot and of the Pine street lot. The Rush street lot was the only lot occupied as a homestead. (Rec., 61.) It is Warfield's testimony that the agreement embraced the homestead and the lot cornering on the homestead. (Rec., 62.) Kendall, on the other hand, understood that the agreement was binding only as to the Rush street lot, for Kendall drew up the deed which Kirchoff requested from the company, and sent that deed to the company for execution. The only property described in that deed was the one lot on Rush street. (Rec., 285.)

Kirchoff, in his testimony, says that the alleged agreement was made by him as agent for his wife. In his answer to the petition of the Receiver for writ of assistance, however, he swears that the agreement was made for himself, and that it provided that the company would make to him, or to whomsoever he might nominate, a deed for the two lots.

Comment on such testimony as this is superfluous. We refer to it now merely because it emphasizes our proposition that the value of the Federal decree cannot be made to depend upon the weight which State courts may or may not give to the evidence of discredited agents and interested witnesses.

The great gift of civilized government is the means for the peaceful determination of private disagreements. When a judgment or decree is once rendered by a court of competent jurisdiction, that judgment is binding upon the parties for all time to come. It stands by its own strength, and is not subject to impeachment in any other manner than along those narrow lines which public policy and the practice of the courts have established. The suitor who has secured a favorable judgment is protected by it against any infirmities of memory which his witness may afterwards suffer, and against the obliquities of human nature, to which all witnesses are more or less liable. A judgment resting upon memory or honesty would have for its foundation the weeds that ride on the sea. It might appear permanent enough to-day, but to-morrow would be drifted from the vision. Doubtless unjust judgments have been entered, both in State and in Federal Courts, but to permit any Court to disregard the judgment of another because it attached different weight to the evidence upon the question submitted, would be to make litigation endless; to deprive the Federal Courts of the paramount authority which they now exercise upon subjects of Federal law, and in our effort to escape the ills we know, to fly to others, and greater, that we know not of.

FRANK L. WEAN,
E. PARMALEE PRENTICE.

J. H. DRUMMOND,
Of Counsel.

APPENDIX.

Note.—For the convenience of the court we print here the complete opinion of the Appellate Court of Illinois in the case of *Kirchoff v. Union Mutual Life Ins. Co.*, containing the directions for decree, which were affirmed by the Supreme Court of Illinois in the opinion and judgment to which this writ of error is directed. The opinion is reported officially in 33 Ill. App. 607, and is as follows:

GARY, P. J.: The facts of this case as established by a preponderance of the evidence, are that in May, 1871, the Insurance Company loaned $60,000 to the complainant and plaintiff in error and her husband, Julius Kirchoff, and her mother, Angela Diversey, upon their note secured by a trust deed conveying many parcels of land belonging to them in severalty, among which were lots 2 and 4, in block 21, of the Canal Trustees' Subdivision of the south fractional quarter, Sec. 3, T. 39 N., R. 14 E. 3rd P. M., which were the property of the complainant.

In 1878 there was default in payment. Reasons which are not very clearly shown by the record, led to negotiations which resulted in the conveyance by the mother of all her lands included in the deed, except forty acres which the company released to her, and by the complainant and her husband of all their lands included in the deed, which conveyances the company accepted in satisfaction of their debt. But as to a part of the transaction, it was agreed that the complainant might purchase from the company the two lots for $10,000, the terms for the payment of which are involved in considerable uncertainty, except that they were to extend over a period, probably of nine years, but which certainly has now elapsed, and that the rate of interest was to be six per cent.

She filed her bill to have the benefit of this agreement. The bill was dismissed upon the hearing. As was said in *Sargent* v. *Howe*, 21 Ill., 148, the deed of trust in this case "only differs from a mortgage with power of sale in "its being executed to a third person instead of the cred-"itor," and therefore the dealings between the parties are within the rule applicable to mortgagors and mortgagees, "that the courts look upon their transactions "with jealousy." 1 Jones Mtg., 711.

The evidence as to the agreement is by the testimony of Julius Kirchoff, E. A. Warfield, their general agent, and R. B. Kendall, then attorney of the company, and it was made between Julius Kirchoff, acting for the complainant, and Warfield, with some participation by Kendall, acting for the company.

The authority of Warfield to act for the company under circumstances as shown by this record, has been affirmed by the Supreme Court in the cases of this company v. *White*, 106 Ill., 67, and v. *Slee*, 110 Ill., 35. The testimony of Julius Kirchoff, in regard to the agreement, is much weakened by the inconsistency of his conduct afterwards, but it is so corroborated by Warfield and Kendall, that there is sufficient proof of the agreement. Before the conveyance to the company, it had commenced foreclosure proceedings, in which they sought to reform the description the description of part of the lands of Mrs. Diversey; she had answered, contesting it, and alleging a defense which, if successful, would have invalidated, most if not all, of the papers she had executed. The company understood, whether correctly or not is immaterial, that they could make no adjustment with her without the assent of the Kirchoffs. There were, therefore, considerations to induce the company to make the agreement, and she recover her costs. But if she do not so pay, the bill to be dismissed at her costs.

Bremer v. *Canal & Dock Co.*, 127 Ill., 464.

Reversed and remanded with directions.

GARNETT, J., does not concur in the conclusion reached.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

UNION MUTUAL LIFE INSURANCE COMPANY,
PLAINTIFF IN ERROR,

vs.

ELIZABETH KIRCHOFF.

IN ERROR TO THE SUPREME COURT OF ILLINOIS.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

IRA W. BUELL,
WILLIAM S. HARBERT,
GEORGE R. DALEY,
FOR DEFENDANT IN ERROR.

THE GUNTHORP-WARREN PRINTING COMPANY, 53 DEARBORN ST., CHICAGO.

IN THE

Supreme Court of the United States.

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IN ERROR TO THE SUPREME COURT OF ILLINOIS.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

The bill in this case was originally filed on June 12, 1882. In addition to all the proceedings which took place in the Circuit Court of Cook County, Illinois, the case has been twice to the Appellate Court of the First district of Illinois, and three times to the Supreme Court of the state. During this protracted litigation, covering a period of a dozen years, all the facts in the case have been sifted and re-sifted, and argued and re-argued before the courts of Illinois to such an extent that a single copy of the briefs of counsel in this case would compose a large volume of several hundred pages. Having run its course in the courts of the State of Illinois, the case is brought to this court by a writ of error from the Supreme Court of the state, upon the alleged ground that a Federal question is involved, and under the guise of that issue it is sought by counsel for plaintiffs in error to thrash the old straw over again in this court. We have no hesitancy in discussing the facts involved in the case, but we do not understand that these facts are in issue upon the hearing of this writ of error. As we understand the practice, the inquiry of this court extends merely to ascertaining,

1. Whether a federal question is involved.

2. If so, whether that question was correctly decided by the State court.

We shall, therefore, address ourselves to these questions in their order, without discussing the facts any further than may be necessary to an understanding of those questions, and the scope of the findings by the state courts.

In formulating answers to the two questions which we have pointed out it will materially assist the court, to be advised by a concise statement of the facts in the case as they were found to be by the state courts.

On the 8th of May, 1871, Julius Kirchoff, the husband of the defendant in error, together with his brother and one John Kinney, was engaged in the distillery business in the City of Chicago; and being pressed for money, Kirchoff borrowed of the Union Mutual Life Insurance Company, plaintiff in error, $60,000. To secure the payment thereof, he, together with his wife, Elizabeth Kirchoff, and her mother, Angela Diversey, executed a joint judgment note for $60,000, and a trust deed to secure the same, covering all of the real estate belonging to Kirchoff and wife, and nearly all owned by Mrs. Diversey. The money received from the loan was put into the bank to the credit of the firm of Kirchoff Bros. & Co., which soon after failed.

In 1876 default was made in the payment of interest upon the encumbrance, and taxes upon the property, and negotiations were entered into with a view to funding the indebtedness, including principal and interest, into a new loan at a low rate of interest, and to be secured by a new trust deed. These negotiations were unsuccessful, judgment was taken against Mrs. Diversey on the note, and on July 11, 1878, proceedings were commenced in the United States Circuit Court for the Northern District of Illinois, against all the makers of the note and grantors in the trust deed to foreclose the trust deed.

Mrs. Diversey filed her answer, setting up various matters of defense. An effort was made to settle the whole litigation, and the terms of settlement were shortly afterward agreed upon with the defendant in error, by which she was to convey to the company all her property and receive back a deed to the premises in question, for which she was to pay to the company the appraised value to be fixed by one James H. Rees, the regular appraiser for the company. Rees appraised the property at $10,000, and there is no question but that that was its then full value. This amount was to be paid, $1,000 upon the delivery of the deed from the company, and the balance in yearly installments of $1,000 each, extending over a period of nine years, and to be secured by mortgage upon the premises. But the company could not conclude the arrangement with defendant in error without at the same time settling with Mrs. Diversey, as otherwise, she being the joint maker of the note and trust deed, might be released upon her obligations. Consequently the carrying out of the settlement with the Kirchoff's was deferred until a settlement was finally made with Mrs. Diversey in September, 1879, by which the company released to her a portion of the premises which she had mortgaged to it, and received from her a conveyance of the remainder. At the same time defendant in error, pursuant to the agreement already made with the company, conveyed to the company all of her premises included in the trust deed.

Soon afterward it was found that there were certain intervening claims on one of the lots growing out of a sheriff's deed executed pursuant to sale on a judgment against Mrs. Kirchoff rendered subsequent to the original trust deed, but prior to the deed from Kirchoff and wife to the company, which rendered necessary a further prosecution of the foreclosure proceedings in order that the company might obtain a good title to the premises so that it could convey a clear title to Mrs. Kirchoff and take from her a mortgage which would be a first lien thereon. This matter was explained to Mr. Kirchoff, the husband and agent of defendant in error, and he was assured that the further prosecution of the foreclosure proceedings would not in any manner affect the agreement which had been made; but that as soon as the company got the deed from the master in chancery it would carry out its part of the contract by conveying to the defendant in error the premises in question and would then take the mortgage from her. Relying on this agreement, no defense was made to the foreclosure proceedings by the defendant in error and the same were prosecuted to a decree, and a master's deed issued thereon to the plaintiff in error, on January 21, 1882. The company declined to convey the premises to Mrs. Kirchoff, and on June 12, 1882, she filed her bill in the Circuit Court of Cook County, Illinois, against the complainant in error, to compel it to carry out the agreement. Upon a hearing, the bill was dismissed by the Circuit Court for want of equity. An appeal was taken to the Illinois Supreme Court, which was dismissed upon the ground that the case should have gone to the Appellate Court (128 Ill., 199), whereupon the defendant in error sued out a writ of error from the Appellate Court of the First district of Illinois to the said Circuit Court, and upon hearing in the Appellate Court the decree of the Circuit Court was reversed, with directions to that court to enter a decree in accordance with the opinion of the Appellate Court (33 Ill. App., 607.) From the decree of the Appellate Court the plaintiff in error prosecuted its appeal to the Supreme Court of the State of Illinois, which affirmed the decree of the Appellate Court (133 Ill. 368), and it is to reverse that decision of the Supreme Court of the State of Illinois that this writ of error is prosecuted.

Upon the affirmance by the Supreme Court, the case was again re-docketed in the Circuit Court of Cook County, and an accounting taken and a decree entered in accordance with the opinion of the Appellate Court. From that decree the company appealed to the Appellate Court of the First district of Illinois, which affirmed the decree of the Circuit Court (51 Ill. App., 67), whereupon the plaintiff in error again appealed to to the Supreme Court of the State of Illinois, which affirmed the decision of the Appellate Court (149 Ill. App., 536).

I.

THERE IS NO FEDERAL QUESTION INVOLVED.

The first question to be determined by the court is as to whether it has jurisdiction to review the decree of the Supreme Court of the State of Illinois. If it has such jurisdiction it is by virtue of section 709 of the Revised Statutes of the United States which provides that the final decree of the State Supreme Court may be re-examined by this court where any title, right, privilege or immunity is claimed under any authority exercised under the United States, and the decision is against such title, right, privilege or immunity specially set up or claimed under such authority.

In support of the claim of jurisdiction it is contended that the courts of the State of Illinois decided against the title of the company derived under the decree of foreclosure in the United States Circuit Court and master's sale and deed thereon.

The bill of complaint of defendant in error alleges that said proceeding was prosecuted by consent and that there was an agreement that when the company got its deed from the master it would convey the premises to her. This the defendant, (here plaintiff in error,) in its answer denied. The validity of title derived under the foreclosure proceedings was not called in question. The bill admitted that such a title existed, and the whole controversy rested entirely upon whether there was an agreement for a conveyance by the company to the complainant which she could enforce in a court of equity. The prayer of her bill is not that the conveyance by the master, pursuant to the foreclosure proceeding, be set aside, but that the company be compelled to convey to her. (Print. Rec., 19.)

There is nothing in the record showing what the decree of the Appellate Court, which was affirmed by the Supreme Court, and which is sought to be reversed in this court, was. It is, therefore, *impossible to determine from the record how that decree affected the rights of plaintiff in error;* and we apprehend that on that ground alone the writ should be dismissed. If plaintiff in error desired to have this court pass upon the decree of the Appellate Court, it could have had that decree embodied in the record in some proper form so that its full effect might appear. This it has not done.

But if this court will look beyond the record to determine the scope of that decree, it is to be found in 33 Ill. App., 607. Upon reference thereto it will appear that the Appellate Court in entering its decree did not attempt to set aside the title acquired by the company under and by virtue of the foreclosure proceedings, but expressly directed the Circuit Court to take an account, and "when the amount due the company is "ascertained, to enter a decree that upon the payment of "that amount, with interest thereon, within ninety days "thereafter, *the company convey to her.*" That court found that (page 612), "the foreclosure proceedings went "on after the conveyances to cut off an intervening title' "but with the agreement that it should not affect the "agreement as to the lots described."

In passing on the contention that the matters embraced in the bill should have been set up as a defense to the foreclosure proceeding, the Illinois Supreme Court said (Print. Rec., 305):

"It is also denied (claimed) that complainant's "failure to assert the alleged agreement in the fore-"closure proceedings is a bar to its assertion here; that

" the proceedings in the foreclosure are conclusive. We
" are unable to concur in this position. It was a part
" of the arrangement under which the complainant
" was to obtain the two lots in controversy, that
" a decree of foreclosure should be entered, and that
" the premises should be sold under such decree. The
" decree was rendered and the sale made by consent, for
" the purpose of clearing different tracts of land mentioned
" in the quitclaim deed, from certain encumberances.
" The decree was not adverse to the interest of
" complainant, but in harmony with her interest. She is
" not attacking the decree, but claiming the enforcement
" of an agreement under which it was rendered ; and in
" our judgment there is no ground for holding that the
" rights of complainant were cut off or in any manner impaired
" by the decree."

At the time this cause was before the Illinois Supreme Court upon an appeal from the decree entered upon the accounting pursuant to the directions of the Appellate Court, this same question was again urged and the Supreme Court presented its views as follows. " It is said
" the suit is brought to review and set aside a decree of
" the United States Circuit Court, and the bill is treated
" throughout the discussion as hostile to the foreclosure
" proceeding in that court, or as attempting to obtain
" relief properly available in that action. This is a misapprehension
" of the scope and purpose of complainant's
" bill. In our former opinion we said : 'After the settlement
" had been concluded it turned out that certain encumbrances
" existed against some of the property which
" were subsequent to the trust deed, but which would
" take priority to the quitclaim deed executed by complainant
" and her husband ; it therefore became necessary

"in order to obtain a perfect title to go on with the fore-
"closure proceedings, which was done.' This statument is
"based upon an allegation of the bill to the effect that
"it being represented to the complainant by the
"attorney of the company that it would be necessary to
"foreclose the trust deed in order to make good the title
"in the company to the lots, before they could take a
"mortgage thereon for the installments of redemption
"money, it was agreed between the parties that the
"agreement for redemption should not be executed until
"after the title had been perfected in the company by
"foreclosure, but in the meantime the plaintiff should
"execute and deliver to the company her quitclaim deed
"and should interpose no defense to such foreclosure.
"The allegation was found, in the opinion above referred
"to, sustained by proofs and is conclusive of that fact
"upon this appeal. The foreclosure decree in the Fed-
"eral court was therefore as much the result of the
"agreement relied upon by complainant as was the mak-
"ing of the quitclaim deed by her. So far from this
"being an attempt to review, modify, or set aside the de-
"cree of the United States Circuit Court, the right of
"action is predicated in part at least upon it; whether
"the bill be called a bill to redeem or given another
"name, can in no way affect the question of jurisdiction
"in the state court. The relief sought is the enforce-
"ment of a *contract* to re-convey the property in ques-
"tion which we have already held the complainant en-
"titled to."

Union Mutual Life Ins. Co. v. *Kirchoff*,
149 Ill., 539.

As before stated it will be seen by reference to the bill that no attack was made upon the decree of the

United States Court nor was that decree or the deed pursuant thereto set up as a bar to the relief prayed. Referring to the assignment of error upon the appeal from the Appellate to the Supreme Court of Illinois, we find no claim that due credit and effect had not been given to the proceeding in the United States Court. (Pr. Rec., 297.) The questions at issue were purely and simply whether or not *as a matter of fact* such an agreement as was alleged in the bill was made, and if so, whether or not, *as a matter of law*, the defendant in error was entitled to a conveyance from plaintiff in error; and we fail to see that the plaintiff in error is in any better position, by reason of deriving its title in part under a decree of the United States Court, than it would have been if that title had been derived by virtue of a patent from the government, or in any other manner. We see no reason why the fact that the title which it holds was derived in part by virtue of an authority exercised under the United States should in any manner absolve the plaintiff in error from the performance of its agreement.

We had always supposed that a title acquired by such a decree might be disposed of the same as if acquired in any other manner; that it might be leased, mortgaged, sold, conveyed or devised the same as a title acquired by an ordinary deed, and a pre-existing agreement would apply to it in the same manner. But counsel for plaintiff in error seem to think that the title can be divested only through the medium of the court which invested it.

The cases cited by counsel for plaintiff in error are none of them in point. In every one of those cases the validity of the title claimed under the exercise of Federal authority was brought directly in question. Here it is admitted that the company has the title. It acquired that title in part under the quitclaim deed of Mrs. Kirchoff and in part through the foreclosure proceedings in the United States Court; but in whole pursuant to the agreement that when it was acquired it would be conveyed to defendant in error. A bill to enforce that agreement is not one attacking that title.

In *Roby* v. *Colehour*, 146 U. S., 161, Roby, while holding the title to certain property in which the Colehours were interested, went into bankruptcy and afterward purchased the property at a sale by his assignee. Some years later the Colehours brought suit against Roby to enforce the recognition of their interest in the property and to set aside a deed from William H. Colehour to Roby. Roby set up his own bankruptcy proceedings and claimed title from his assignee in bankruptcy. The case was decided against him and he appealed to the Supreme Court of Illinois which affirmed the decree of the lower court; upon which he prosecuted a writ of error from the Supreme Court of the United States to the state court, upon the ground that a title or right was claimed under an authority exercised under the United States by virtue of the bankruptcy proceedings. A motion was filed to dismiss the writ of error which this court denied but stated that the question was a close one.

The distinction between that case and this is that in that case there was no agreement as to Roby's purchase from his assignee in bankruptcy. If there had been an agreement that when he should have received title from the assignee he would convey to the Colehours and they had filed a bill to enforce that agreement, and the state court should have directed him to convey accordingly, then the case would have been like the one at bar. There it was claimed that he held the title to a part of the premises in trust and that as to that part nothing passed to the assignee in bankruptcy and that consequently the deed from the assignee conveyed no title to that part. Here nothing of the kind is claimed, but on the contrary it is admitted that the foreclosure proceeding and master's deed did clear the property of an intervening title and must be taken in connection with the deed from defendant in error to vest a good title to the premises in the company, and that title when so vested is not attacked, but it is claimed that the company holds it in trust for the defendant in error by virtue of the agreement which is sought to be enforced.

II.

IF THE COURT SHOULD HOLD THAT A FEDERAL QUESTION IS INVOLVED IN THIS CASE, THEN SUCH QUESTION WAS CORRECTLY DECIDED.

As before stated, the only claim to support the jurisdiction of this court is that the plaintiff in error sets up a title derived under a decree of the United States Court. If that claim is sufficient to support the jurisdiction of this court then the only further question to be determined is whether, assuming the agreement to have been made as alleged, the state court properly decided that, notwithstanding the foreclosure proceedings, the company should be compelled to convey.

What effect is to be given to a judgment or decree of the United States Circuit Court? Only the same effect as the state court would give to its own judgment or decree.

> *Dupasseur* v. *Rochereau*, 21 Wall., 130.
> *Crescent City Live Stock Co.* v. *Butcher's Union Slaughter House Co.*, 120 U. S., 141.

In *Dupasseur* v. *Rochereau, supra*, it is said, "the only "effect that can be justly claimed for the judgment in the "Circuit Court of the United States is such as would be"long to judgments of the state courts rendered under "similar circumstances."

Assuming the agreement to have been made as alleged, and as found to have been proven by the courts of Illinois, was the complainant entitled to the relief granted and to a conveyance from the company, or was she concluded by the decree in the Federal court, which it was agreed between the parties should be entered, in order to perfect the title to the premises in the company.

Much has been said by counsel for plaintiff in error about this being a bill to redeem, and that being a bill to redeem, it should have been brought in the United States Court, as the trust deed was foreclosed in that forum and no other court could set aside that decree of foreclosure.

The position of counsel would be entirely correct if defendant in error were seeking to set aside the decree of foreclosure; but she is not seeking to do so. The title was acquired by the company under the deed of defendant in error and under these foreclosure proceedings, pursuant to the agreement that as soon as it so acquired title it would convey to the plaintiff in error and take a mortgage back to secure the sum of $10,000. Having declined to execute that agreement after the title was perfected in it, a court of equity will consider it as holding the title in trust for the security of the $10,000; and because of the pre-existing relations between the parties of mortgagor and mortgagee the bill may be said to partake in many respects of the nature of a bill to redeem. But courts of equity never regard the form of the transaction. It was to avoid those formalities that the court was originally established, so that every case might be decided upon its own merits and upon the particular facts. It is not necessary that the bill have a specific title. The field of equity is too broad to permit the use of copyrighted forms in its pleadings.

The defendant in error owes the plaintiff in error a sum of money and the plaintiff in error holds the title to certain property which it was intended by both parties should belong to the defendant in error and should secure the plaintiff in error the amount of its claim. To that extent the relation of the parties is that of mortgagor and mortgagee.

The statute of the State of Illinois (Chap., 95, Sec. 12) provides that "every deed conveying real estate which "shall appear to have been intended only as a security in "the nature of a mortgage, though it be an absolute con-"veyance in terms, shall be considered as a mortgage."

This statute has been in force in the State of Illinois in its present form for the last fifty years, and is only declaratory of the well settled rule applicable to courts of equity and always followed by the courts of that state.

This court has adopted the same rule in no uncertain terms. In *Peugh* v. *Davis*, 96 U. S., 332, the court said:

"It is an established doctrine that a court of equity "will treat a deed absolute in form as a mortgage when "it is executed as security for a loan of money. That "court looks beyond the terms of the instrument to the "real transaction, and when that is shown to be one of "security and not of sale, it will give effect to the actual "contract of the parties. As the equity upon which the "court acts in such cases arises from the real character "of the transaction, any evidence, written or oral, tending to show this is admissible."

Again, in *Villa* v. *Rodrigue*, 79 U. S., 323, it is said: "The law upon the subject of the right to redeem "where the mortgagor has conveyed to the mortgagee the "equity of redemption, is well settled. It is characterized by a jealous and salutary policy. Principles almost as stern are applied as those which govern where "a sale by *cestui que trust* to his trustee is drawn in question. To give validity to such a sale by a mortgagor "it must be shown that the conduct of the mortgagee was, in all things, frank and fair, and that "he paid for the property what it was worth. He must "hold out no delusive hopes; he must exercise no undue "influence; he must take no advantage of the fears or poverty of the other party. Any indirection or obliquity "of conduct is fatal to his title. Every doubt will be resolved against him. Where confidential relations and "the means of oppression exist, the scrutiny is severer "than in cases of a different character. *The form of the "instruments employed is immaterial.* That the mortgagor knowingly surrendered and never intended to reclaim is of no consequence. If there is vice in the "transaction the law, while it will secure to the mortgagee his debt, with interest, will compel him to give "back that which he has taken with unclean hands. Pub-

lic policy, sound morals and the protection due to those
" whose property is thus involved require that such should
" be the law."

In *Morrell* v. *Cooper*, 65 Barb., 512, the parties after a sale of the mortgaged premises under a decree of foreclosure entered into a parol agreement, by which the mortgagee was to reconvey to the mortgagor upon payment of the indebtedness. Upon the faith of these promises the mortgagor acquiesced in the sale and omitted to apply by motion to have it set aside. It was there held to permit a party to avoid his agreement under such circumstances would be allowing the statute of frauds to be used as an instrument of fraud instead of a shield against it, and the mortgagee was compelled to convey.

In the case of *Beegle* v. *Wentz*, 55 Pa. St. Rep., 369, Beegle recovered a judgment against Wentz and levied upon certain land belonging to the judgment debtor, and upon which he resided. Wentz claimed his exemptions under the statute. Upon this a parol agreement was entered into between the parties, by which it was agreed that the land should be sold by the sheriff and bought in by the creditor and that upon consideration of the debtor waiving his exemptions Beegle would reconvey to him a part of the premises. Upon obtaining title to the premises Beegle refused to reconvey and brought ejectment; the defendant set up the parol contract. In delivering its opinion the court said:

"The distinguishing feature of this case is that the
" agreement of Wentz was not to acquire a new interest
" in the land by parol; but he was the owner of the land;
" had a title both legal and equitable and a right to re-
" tain so much of the land as would be of the value of
" $300. It was this subsisting title which Beegle per-

"suaded Wentz to forego by his promise to leave him "his house and fifteen acres and make over to him the "sheriff's deed for that part. This part he was not to "take, but to hold in trust. His language was, that he "did not want to take their home from them. That he "would give them a home of fifteen acres, provided "Wentz would sign some agreement to let him sell the "whole tract; and he would buy the land and give them "a sheriff's deed for the fifteen acres. * * * The "trust in such cases arises *ex maleficio* on the principle "that equity will not permit one to deprive another of "the title which he actually has by such a promise not in"tended to be performed. * * * Nor does it make "any difference that the title was acquired by Beegle "through a judicial sale."

That case is cited with approval by the Supreme Court of Illinois in the case of *Fischbeck* v. *Gross*, 112 Ill., 208.

The general rule is stated by POMEROY, as follows:

"Whenever a person acquires the legal title to lands "by means of a verbal promise to hold them for a cer"tain specified purpose, as for example, a promise to "convey them to a designated individual, or to reconvey "them to the grantor and the like; and having thus ob"tained the title, fraudulently retains, uses and claims "the lands as absolutely his own, so that the whole trans"action by means of which the ownership was obtained "is based upon deceit, and is, in fact, a scheme of actual "fraud, such party is regarded as holding the lands "charged with an implied trust arising from his fraud, "and he will be compelled by a court of equity to exe"cute this trust by performing his agreement and by "conveying the estate in accordance with his promise."

Pomeroy on Specific Performance, 144.

Authorities might be multiplied indefinitely, but it would be useless to cite them as the rule is too well settled.

Assuming then that the agreement was made as alleged and as found by the state courts, it is quite evident that the defendant in error was entitled to the relief granted.

We think that we have fully answered all the arguments of plaintiff in error, which are properly the subject of consideration by this court under any view which may be taken of the case. But there are three matters urged by counsel, which, though more properly relating to the effect of the evidence offered in establishing the facts, yet so permeate the argument of counsel as to call for some consideration here. Those matters are:

1. That the alleged contract was immoral and an imposition upon the court which foreclosed the trust deed.

2. That the defendant in error had an opportunity to enforce the agreement in the foreclosure proceedings, and that having failed to do so, the decree in that case is conclusive.

3. That the proceeding on the application for a writ of assistance was an adjudication of the matters involved in this suit.

We will discuss these points in the above order.

First, as to the alleged immorality of the agreement: Counsel say that there were some judgments against Mrs. Kirchoff which were rendered subsequent to the making of the trust deed, but prior to the deed from Mrs. Kirchoff to the company; and that any agreement between the company and Mrs. Kirchoff to the effect that the foreclosure proceedings should be continued to decree and sale for the purpose of depriving those judgment creditors of their liens would be illegal, immoral, dishonest and fraudulent; that the United States Court would have turned with disgust from any attempt to perpetrate such a fraud through its instrumentality.

Counsel have not explained just how anyone would be defrauded, for if there were judgments against the property while the title was in Mrs. Kirchoff the lien of those judgments would again attach when she should be again invested with title by conveyance from the company.

But counsel have made a mistake in regard to the facts in the case, which is by no means a novel experience with them. There were no judgments against Mrs. Kirchoff which were liens upon the property. There had been judgments against her and a sale had been made of one of the lots under one of those judgments and a sheriff's deed issued. (Pr. Rec., 105.) This deed was an adverse intervening title and not a lien upon the premises. Mrs. Kirchoff desired to retain her home and was paying to the company its full appraised value, and we do not understand why she was not entitled to a clear title to the property. She was certainly under no obligation either legal or moral to redeem this property for the benefit of an adverse claimant. The interests of the parties demanded that the estates should not merge by the execution of the deed to the company, and equity will permit them to be kept separate for the purpose of doing exactly what was done in this case—foreclosing the mortgage and thus cutting off the intervening title.

15 Amer. & Eng. Enc. of Law, 322 *et seq.*

We cannot admire that peculiar ethical faculty of counsel which would turn with such abhorrence from so innocent a transaction, and yet so ably champion this plaintiff in error in its attempt to repudiate an agreement eminently fair to it, and to deprive this defendant of her home, simply because subsequent events seemed to indicate that it would be to its interest to do so.

Second, as to the claim that the decree in the Federal court was conclusive. Under this head, counsel urge several reasons why the decree in the foreclosure proceedings is conclusive, but they are all based upon the assumption that the company repudiated the agreement in November, 1879, and that Mrs. Kirchoff was apprised of that repudiation in time to have interposed her defense in the foreclosure suit. A full discussion of this point would involve an examination of the evidence which we apprehend this court will not make. It would be sufficient answer to say that the Supreme Court of the State of Illinois held that the agreement was made, that Warfield, the agent of the company, had authority to make it (Pr. Rec., 304), and that the foreclosure proceedings were carried to decree pursuant to the agreement. As these findings necessarily involve the question assumed by counsel, this court, if necessary to support the decree of the state court, will consider those questions of fact determined against counsel's contention.

But, if the court will examine into the evidence and the circumstances surrounding the parties at that time, it will see how absurd is the contention made by plaintiff in error. Kendall, the attorney for the company, had advised the officers of the company that neither Kirchoff nor his wife were personally liable on the note secured by the trust deed. He was also aware that if a settlement of the case was made, it must be made with all parties. The correspondence shows that he was fully alive to all the interests of the company.

There is an intimation in Kendall's testimony that he tendered back to Kirchoff the quitclaim deed which appellee had executed to the company, or that he told him that he might withdraw it, but that Kirchoff declined to take it insisting upon the company carrying out its contract. (Pr. Rec., 151). He had previously testified that he did not tender it back. (Pr. Rec., 110.) The contradiction in Kendall's testimony arises from the fact that the letter-press copy of the letter from him to the company, dated November 8, 1879, was incorrectly transcribed by the master, and made to read: "I *have com-* "*municated* the company's decision to Kirchoff" (Pr. Rec., 145); whereas the letter itself reads: "I will "communicate the company's decision to Kirchoff." (Pr. Rec., 216; Exhibit 40.)

On a subsequent examination of the witness, he, having read over his previous testimony which contained the incorrect transcript of the letter, was of the opinion that he did communicate the company's decision to Kirchoff, and thought that he tendered the deed back to him. The letter itself shows that at the time it was written he had not told Kirchoff of the company's decision, and the deed was recorded at 1 o'clock (record says 10 by mistake) of the same day on which the letter was written. (Pr. Rec., 283.) So that, if he saw Kirchoff and tendered the deed back, he must have done so within a few hours after writing the letter to the company—a condition which renders such tender so improbable that it will require stronger evidence than the mere supposition of Kendall to lend it any weight. There is no evidence that he set aside or offered to set aside the default which he had taken against defendant in error in the foreclosure proceedings, but on the contrary, proceeded to take a decree against her.

If Kendall ever did tell Kirchoff that he might withdraw the deed, he never made the offer in good faith, with the intention of allowing it to be done; because he, as the company's attorney, knew that it was in no position to surrender the deed. The note was a joint one (Pr. Rec., 202), and Mrs. Diversey, one of the joint makers, having been released from liability thereon some months prior, her co-obligors were likewise released.

1 Parsons on Contracts, 27.
Parmalee v. *Lawrence*, 44 Ill., 405.
Brooks v. *Stuart*, 9 A. & E., 854.

Both she and Mrs. Kirchoff had pledged their property to secure Kirchoff's debts, and as a portion of her property had been released from the trust deed and she released on the note the very thing which Kendall was careful to avoid would have occurred, and the lien of the trust deed upon Mrs. Kirchoff's property been endangered if not defeated.

At this time no hearing had been had in the foreclosure proceedings, and, in view of the fact that defendant's default had been obtained in pursuance of the agreement, and because of her reliance thereon, upon presenting the facts to the court, she would have had little difficulty in having the same set aside and obtaining leave to interpose a defense. That her defense would have been successful will admit of no doubt.

That Kendall knew that it was impracticable to settle with one of the makers of the note without settling with all, is shown by his letter of January 1, 1879, in which he says that he dare not settle with Kirchoff without settling the whole matter, as it might prejudice the company's rights against Mrs. Diversey. (Pr. Rec., 210.) He must have known that the converse of this was also true; and that he could not settle with Mrs. Diversey without settling with the Kirchoffs. From this it is clear that Kendall never had any intention of returning Mrs. Kirchoff's deed to her. The company, after it took her deed, never was in a position where it could place her *in statu quo*, without a sacrifice on its part of many times the value of this property.

In regard to this alleged tender back Kirchoff says (Pr. Rec., 34) that they never gave the quitclaim deed back to him. Warfield says (Pr. Rec., 80) that the deed from Mr. and Mrs. Kirchoff was never tendered back to them to his knowledge. Kendall, before he had been misled by the incorrect transcript of his letter to the company, adverted to heretofore, says that the company never tendered back to Kirchoff a reconveyance of the property, and never tendered back his quitclaim deed. (Pr. Rec., 110.) Kirchoff where he says that "there "was some talk," refers to no particular time, and that conversation may have occurred a year or more after the deed was recorded. He further says that he never saw the deed again. (Pr. Rec., 291.)

Kendall says that upon receipt of the president's letter he thinks he tendered the deed back to Kirchoff, or gave him a chance to withdraw it. Let us see what the situation of the parties was at that time. The foreclosure sale did not take place for nearly a year after the date of that letter, and without defendant's deed the company had no title to the premises, but was at most only the beneficiary in the trust deed. Yet DeWitt writes as though the company owned the property. He says that they refuse to *sell* upon the terms mentioned but will *sell* upon certain other terms. (Pr. Rec., 266.) What did they have to sell except the title acquired under the Kirchoff quitclaim? Clearly DeWitt supposed that the deed had been delivered absolutely and recorded at that time. In reply to his letter Kendall before communicating with Kirchoff writes: "I don't think he will *buy* but perhaps he will." (Pr. Rec., 216.) What could Kirchoff *buy* at that time unless it was the title which the company acquired under the quitclaim? It, therefore, conclusively appears that at that time Kendall had no intention of returning defendant in error's deed. The deed was recorded the same day and it is more than likely that it was done at the time the letter was sent.

But supposing Kendall *did* offer to let Kirchoff withdraw the deed, and he "concluded to deliver it, insisting "that he had a contract," and under those conditions the company accepted and recorded the quitclaim deed, and claimed title under it, by its acceptance under those circumstances would it not be estopped from denying the right of defendant in error to a performance of the agreement which was a condition attached to its delivery?

It was after this that the defect in the title was discovered and the agreement made that the foreclosure proceedings should go on until that defect was remedied and that the company would then convey. (Pr. Rec., 30, 63, 105.) What basis then is there for the claim that the agreement should have been set up in the foreclosure suit or that the decree in that suit is conclusive? If defendant in error had set up a defense in that suit it would have been in direct violation of her agreement with the company. Neither could she redeem from that suit, because if she had done so, such redemption would have been as to one of the lots for the benefit of an outstanding title. And further, the company had bid in the property at the foreclosure sale at a sum largely in excess of its value to prevent redemption by the intervening claimant. (Pr. Rec., 241.) It is said that if the defendant in error had set up the agreement in that suit, the court would have recognized it and preserved her rights in the decree. The decree was entered just as it was agreed it should be. The court, if it had undertaken to carry out the rights of the parties under the agreement, could have entered no different decree.

Counsel urge that the alleged repudiation by the company of the contract constituted a breach thereof, and that the plaintiff in error might have at once brought suit for the breach and consequently should at once have interposed a defense in the foreclosure proceedings. If we should assume (what is not proven) that the company had repudiated the contract in 1879 and notified the plaintiff in error that it would not carry it out, she might have claimed a breach and brought suit, but she was not obliged to do so. The time had not arrived for performance by the company. They were not to convey until they received a deed under the foreclosure proceedings. The rule is: "The promisee is not bound to treat the re-"nunciation as a breach. He may, if he pleases, treat it "as inoperative; but in that case he keeps the contract "alive for the benefit of the other party as well as his "own. If the promisor withdraw the notice of his "intention not to perform before the promisee has elected "to treat it as a breach, the latter loses his right to treat "the contract as broken and the parties are in the same "position that they would have been in if the notice had "never been given."

3 Amer. & Eng. Enc. of Law, 906.

Here by recording the quitclaim deed after the alleged notice that it would not perform, the company withdrew such notice and thereafter the defendant in error not only *need not* but *could not* claim a breach.

Third: It is contend that the decision of the Federal court upon the application for writ of assistance against defendant in error is a bar to the present action. It will be remembered that that application was made by the receiver appointed by the court to collect the rents. It was made fourteen months after the entry of the decree in that cause, and over a year after the sale by the master. The report of sale had been filed just one year prior to the application and had been confirmed nine months prior thereto. An entire term of court had intervened between the entry of the decree, the sale by the master, and the report of the sale, and the application by the receiver. The master's report of sale was confirmed, and the term of court at which that confirmation was made had expired. Under those circumstances we fail to see how the court could have set aside the decree upon the application, as counsel contend. It had lost all jurisdiction of the case. It is true it might have refused the writ of assistance, but the refusing or the granting of the writ could in no manner be an adjudication of the controversy between the parties to this suit.

When the rule to show cause why the writ should not issue was served upon Kirchoff he naturally sought the advice of counsel, and in his broken English informed them as well as he could of the facts in the case. In the entire matter he had acted as agent for his wife, and in all probability spoke of the agreement as being made with himself, from which counsel derived the impression that he was the owner of the premises and that the agreement was made with him as such. An answer to the rule was hastily drawn by counsel and filed with the court. It was not done with any intention of adjudicating in that case the rights of the parties, because unquestionably the court had no jurisdiction at that stage of the proceedings and in that form to pass on those rights. The answer was merely filed and the court asked not to issue the writ for fear that the rights of defendant in error would be prejudiced by its issuance. That it was not intended to litigate the facts in the case is evident from the answer itself, which says that "said Kirchoff further states that "his solicitors have in course of preparation a bill in "chancery setting up the foregoing facts and asking that "complainant be required to execute its undertakings in the "premises, or in default thereof that the decree herein be "set aside and held for naught." It is quite probable that counsel at that time were inclined to the opinion that the proper draft of a bill would be asking the alternative relief as stated in the answer of Kirchoff to the petition; but it is quite evident that they subsequently concluded that the proper course was to wait until the company received its deed, as the defendant in error had agreed to do, and then ask that it be compelled to carry out its agreement. The scope of the bill is to be determined from the bill itself, and not from what counsel proposed to do several months before the bill as filed.

The entire scope of the application for writ of assistance was to determine whether Kirchoff or the receiver was entitled to the possession of the premises. On that application the court might very properly say to the defendant in error that she could get no relief in that case, and that the court would not undertake to determine who was in the right, but would take possessian of the premises itself, leaving her to her proper remedy by the bill which she was about to file, and in the meantime, the court having possession of the premises, neither party could be injured.

Counsel for plaintiff in error have quoted from the opinion of the judge of the Circuit Court of Cook County before whom the case was originally heard, upon the question of the effect of the foreclosure proceedings upon the rights of the defendant in error. The opinion of Judge TULEY does not appear in the record, but we shall avail ourselves of the same license of quoting from that opinion, and will leave it to counsel for the plaintiff in error to harmonize the different statements.

The learned judge said: "Assuming that in 1878 "the agents of the defendant in error made a parol "agreement with the complainant as to the sale "back to her of the homestead, I find no estoppel "by reason of the foreclosure proceedings. Although "they may have been commenced adversely, the evidence "of Warfield and Kendall shows that they were not prosecuted adversely after the making of the agreement, "and there is nothing inconsistent in the company deriving title under the foreclosure and an agreement to convey the homestead to complainant after it had perfected "its title by the foreclosure proceedings. Having received complainant's deed of her equity of redemption "in the mortgaged premises in satisfaction of the mortgage debt it had no mortgage to foreclose as against "her."

"A judgment or decree set up as a bar by plea, or re-"lied on as evidence by way of estoppel, to be conclusive "must have been made, 1, by a court of competent jur-

"isdiction upon the same subject-matter: 2, between the "same parties: 3, for the same purpose."

Aspden v. *Nixon*, 4 How., 467.

If the above rule is applied to the foreclosure proceedings, it will be seen that though they were between the same parties and upon the same subject-matter as the present suit, yet they were prosecuted for an entirely different purpose. If applied to the application of the receiver for writ of assistance, it will appear that not only did the court have no jurisdiction in that proceeding at that time to determine the matters here involved, but neither the parties nor the purpose was the same.

Much space has been covered by counsel for plaintiff in error in a discussion of the evidence upon which the finding of facts by the state courts was based. As we have already stated we do not understand that this court will go into an examination of those questions. In the case of *Roby* v. *Colehour*, *supra*, this court, after deciding as a matter of law, that if Roby was under a trust obligation when he went into bankruptcy and purchased the lands in question from his assignee, he could not, by such purchase, acquire title to the premises which would defeat the interests of his *cestuisque trust*, says: "Whether or not such "relations in fact existed between the Colehours and Roby "as prevented him, consistently with those relations, from "purchasing the lands for himself, in other words, whether "he was the attorney of the Colehours when he acquired the "legal title, or whether upon principles of equity, Roby "should be deemed to have acquired the title for them and "himself, subject to the declaration of trust referred to in "the pleadings and decree, *are not questions of a Federal* "*nature*. THE DECREE BELOW IN RESPECT TO THOSE MAT-

"TERS IS NOT SUBJECT TO RE-EXAMINATION BY THIS "COURT."

In any case where it is proper for this court to examine the evidence there must be clear error to warrant the court in setting aside a finding of facts affirmed in the highest court of a state.

Lammers v. *Nisen*, 14 S. Ct. Rep., 1189.

It is claimed that Warfield did not have authority to make the agreement. The Supreme, Appellate and Circuit Courts of Illinois, have said that he did. Judge TULEY said:

"As to the authority of Warfield and Kendall, or Warfield alone, to make the agreement concerning the homestead, if any such was made, there can be no question "under the decisions of our Supreme Court in the Owen "White and the Slee cases. The company stands in no "position to question the authority of said agents. It "received and retains the complainant's quitclaim, conveying to the company her equity of redemption in all "the mortgaged property, and will not be permitted to "retain the fruits of the agreement and at the same time "repudiate the authority of the agents by whom the complainant's quitclaim deed was obtained."

It is said the correspondence of the agents with the officers of the company does not harmonize with their statements on the witness stand. Here, too, the language of Judge TULEY is applicable:

"A large amount of correspondence between the company and its agents, Warfield and Kendall, touching "this loan, is introduced to show that the company was "not advised that any such parol agreement with Kirchoff "had been made. Complainant should not suffer, if such

" is the fact, because of such failure of the agents to ad-
" vise their principal, as that is a matter between them,
" for which she is in nowise responsible. I am not sat-
" isfied from the evidence that all the correspondence be-
" tween said parties has been produced, and am inclined
" to the opinion that it has not been."

The true explanation of the failure of the correspondence to show the agreement more fully, is this: The company had vast interests in Chicago, and these agents were trusted with their administration. They were men of importance, both in their own eyes and in the eyes of the public. They were also salaried agents, whose remuneration bore no relation to the profitable administration of the company's affairs. It was to their interest to make an amicable settlement of the whole matter, and thereby avoid the trouble of an extended litigation. This fact, and the love of aggrandisement, which is inherent in the human species, led to the direct assumption and exercise of an authority which resulted in the making of the agreement in this case. After the arrangements had been completed and carried out on the part of Mrs. Kirchoff, the inevitable necessity of informing the principal arose. After waiting two months Kendall writes the letter of November 1, 1879, in and by which he seeks to obtain the ratification of the agents acts by proposing and advising the acceptance of terms identical in nearly every respect with the contract. The company, it seems, in a letter to Kendall, objected to the arrangement, and Kendall, upon being advised of that fact, recorded the Kirchoff deed and left events to shape their own course.

The continued employment of these agents depended upon the will of the superior. Displeasure meant dismissal. For Kendall to have dissented from the position taken by the president and returned the quitclaim deed to Kirchoff would have been equivalent to handing in his resignation.

"It is not necessary that the contract should be proved "with that degree of moral certainty, that is technically "termed 'beyond a reasonable doubt'; and mere conflict "of evidence is not, of itself, a ground for refusing to "grant the remedy. It is sufficient if the subject-matter "and all the material terms of the contract can be determined with reasonable certainty from all the evidence; "if the judge can ascertain from all the proofs, what the "contract really is, he must decree its execution and in "the words of Lord COTTENHAM 'he will endeavor to "collect, if he can, what the terms of it really were.'"

Pomeroy on Specific Performance, Sec. 137.

It is urged that Kirchoff was informed that the company would not convey, and that thereafter the foreclosure proceedings were adverse. We will quote again from the opinion of the learned chancellor in the Circuit Court:

"Kendall communicated the company's decision to "Kirchoff, but just when does not appear, and thinks he "tendered the Kirchoff quitclaim back to Kirchoff, "although previously in his deposition he had stated that "he did not know of any such tender being made. Kirchoff, when told of the decision of the company, said "that he had a fair agreement with the company and "would insist upon its being carried out.

"Upon obtaining abstracts of title, it was discovered "by Kendall that the equity of Mrs. Kirchoff had been "sold and deeded upon a judgment obtained by E. F. "Runyan. Kendall thereupon deemed it necessary to go "on with the foreclosure proceedings, and to amend the "bill which had been filed by making Runyan, then a "non-resident, a party, and to serve new notice on Kirchoff as a party in possession. This was done on the "17th of January, 1880. Kirchoff, being notified, went "to Kendall and Warfield to know what it meant, and "was in substance informed that it was only for the pur"pose of making the title better, and that it would and "should make no difference so far as his agreement to "the re-purchase of the homestead was concerned, except "in delaying the consummation of the agreement."

Look, too, to the opinions of the Appellate and Supreme Courts on these questions, and then determine whether, under the issues here presented, this court will take upon itself the burden of setting aside the finding of these three courts and disturbing a settlement of rights obtained only after legal controversies lasting a dozen years. The courts of Illinois were influenced by no sectional bias, but only by a desire to do justice between the parties, recognizing that the functions of all courts, national and state, are for the protection of the rights of all.

Respectfully submitted.

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GEORGE R. DALEY,
Solicitors for Defendant in Error.

No. 1445.
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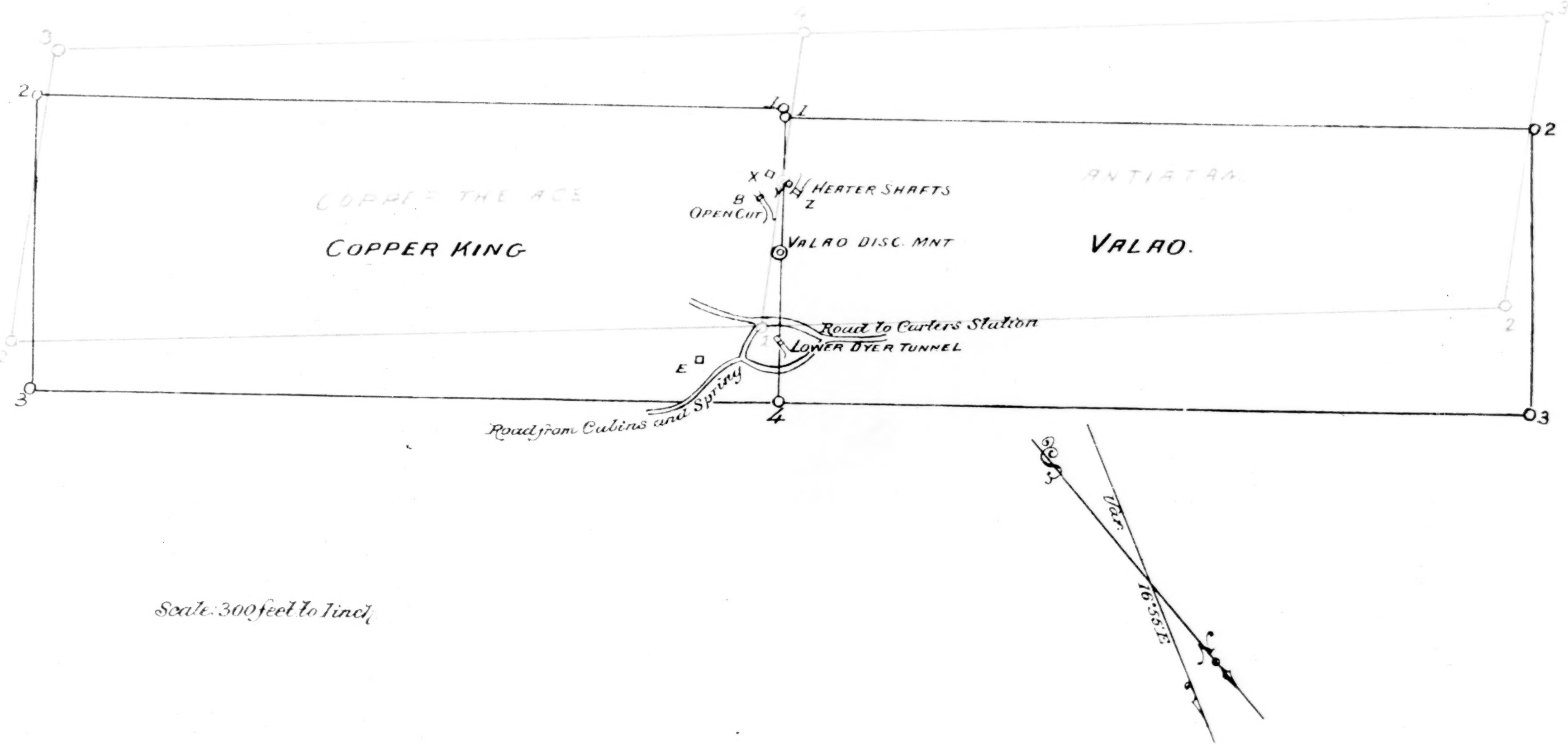

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